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ABSTRACT

This report describes the legislative response to state supreme court rulings on rural and small schools and districts. The paper addresses the following questions: How have rural and small schools and school districts been affected by state supreme court rulings and subsequent legislation? What has been the experience of rural and small school districts/schools in regard to school-finance litigation in selected states? and What school-finance issues continue to plague rural and small school districts in states where litigation has occurred? The population for the study consisted of those states, from 1989 on, where the supreme court has ruled on the constitutionality of the education-finance system. Three states were then selected for in-depth study. The report is organized into 4 chapters. Chapter 1 provides the results of the survey of the states. It explains how finance systems have changed and looks at additional funding for rural and small and geographically isolated schools/districts. The chapter also describes the effects on transportation, school consolidation, and resource sharing. Chapter 2 discusses the state of Tennessee, whereas chapters 3 and 4 examine the states of Wisconsin and Vermont, respectively. Each chapter outlines the study methodology and provides an overview of the state, which includes a historical perspective on school funding. (Each chapter contains references.) (RJM)

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THE IMPACT OF SCHOOL FINANCE LITIGATION ON RURAL AND SMALL SCHOOLS/DISTRICTS

FINAL REPORT

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TABLE OF CONTENTS

INTRODUCTION 1
PURPOSE AND OBJECTIVES 1
ORGANIZATION OF THE REPORT 2

CHAPTER 1. SCHOOL FINANCE LITIGATION AMONG THE STATES IMPACT ON FUNDING RURAL AND SMALL SCHOOLS: A *SURVEY OF THE STATES* 4
Deborah A. Verstegen & Andrew Grider

METHODOLOGY AND ANALYSIS 7
SURVEY FINDINGS 8
FINDINGS 9
FINANCE SYSTEM CHANGED 9
FUNDING CHANGES FOR RURAL AND SMALL SCHOOLS/DISTRICTS 10
ADDITIONAL FUNDING FOR RURAL AND SMALL AND GEOGRAPHICALLY ISOLATED SCHOOLS/DISTRICTS 11
TRANSPORTATION 12
SCHOOL CONSOLIDATION 14
RESOURCE SHARING 16
DISCUSSION 16
REFERENCES 21
APPENDICES 24

CHAPTER 2. STATE EDUCATION FINANCE REFORM IN TENNESSEE: THE EFFECTS OF STATE SUPREME COURT LITIGATION ON SMALL AND RURAL SCHOOLS 30
Andrew Grider

METHODOLOGY 30
Interviews 31
Document Collection 31
A PROFILE OF TENNESSEE 32
DEMOGRAPHICS 32
ECONOMIC INDICTORS 33
GOVERNMENT FINANCE 34
TENNESSEE SCHOOL DISTRICTS 36
HISTORICAL PERSPECTIVE OF SCHOOL FUNDING IN TENNESSEE 37
THE TENNESSEE FOUNDATION PROGRAM 39
TENNESSEE SMALL SCHOOL SYSTEMS V. MCWHERTER LITIGATION 41
CHANCERY COURT CASE 41
Participant Description 42
Defendants' Strategy 42
Plaintiff Allegations 42
Findings of Fact 44
Superintendents' Perspectives 44
Chancery Court Decision 46
Appeal of Chancery Court Decision 47
TENNESSEE SUPREME COURT 48
Education Clause Challenge 48
Equal Protection Challenge 49
SECOND TENNESSEE STATE SUPREME COURT RULING 50
LEGISLATIVE AND STATE ACTION 51

RAISING TAXES 51
THE EDUCATION IMPROVEMENT ACT 52
THE BASIC EDUCATION PROGRAM 53
Fiscal Capacity Formula 54
Cost Differential Factor 54
BEP Calculations 55
BEP--Teacher Salary Adjustment 55
BEP--Phase-In 58
Accountability 58
IMPACT OF THE EDUCATION IMPROVEMENT ACT 59
FUTURE CHALLENGES AND LITIGATION 62
SALARY EQUITY 63
TAX ISSUES 65
REFERENCES 70
APPENDICES 79

CHAPTER 3. COMING AROUND AGAIN: EQUITY LITIGATION AND WISCONSIN RURAL FINANCE 86
Deborah A. Verstegen

STUDY METHOD 86
SCHOOL FINANCE LITIGATION 87
KUKOR V. GROVER (1989)
SOCIAL, ECONOMIC AND DEMOGRAPHIC CHANGES 89
WISCONSIN STATE SCHOOL AID SYSTEM 92
ISSUES RELATED TO WISCONSIN SCHOOL AIDS 93
Comparison of Two Small School Districts: Rich and Poor 94
Special Education Assistance 95
Assistance for Limited English Speaking and Economically Disadvantaged Students 96
Revenue Limits 96
Consolidation Aid 97
Rural and Small District Allotments and Cost Index 97
ANALYSIS OF THE WISCONSIN SCHOOL FINANCE SYSTEM 97
TAX RATES AND SPENDING 98
FISCAL EQUITY ANALYSIS 98
Analysis of Per Pupil Funding--Unweighted Pupils 100
Equity Analysis of Weighted Per Pupil Funding 103
CURRENT SCHOOL FINANCE LITIGATION: *VINCENT V. VOIGHT* 105
CIRCUIT COURT DECISION 106
COURT OF APPEALS DECISION 110
DISCUSSION 112
REFERENCES 116

CHAPTER 4. SCHOOL FINANCE REFORM IN VERMONT: THE IMPACT ON SMALL AND RURAL SCHOOLS 121
Andrew Grider

METHODOLOGY 121
Interviews 121
Document Collection 121
Data Analysis 122
A PROFILE OF VERMONT 122
ECONOMIC INDICATORS 123
VERMONT SCHOOL DISTRICTS 124
HISTORICAL OVERVIEW OF SCHOOL FINANCE IN VERMONT 127

EARLY EQUALIZATION EFFORTS 129
THE FOUNDATION FORMULA 130
Pupil Weights 130
State and Local Funding 131
Revenue Inequities 131
Taxpayer Inequities 132
Quality of Education 133
VERMONT LITIGATION 135
THE PLAINTIFF'S CASE 135
Inequities 135
Plaintiff Selection 136
SUPERIOR COURT ACTIONS 136
STATE SUPREME COURT 137
The Right to an Equal Education 138
LEGISLATIVE AND STATE ACTION 140
ACT 60, THE EQUAL EDUCATION OPPORTUNITY ACT 140
Statewide Property Tax 141
Local Property Tax 142
Transition Period 142
Education Fund 143
General State Support Grant 144
Guaranteed Yield 144
Special Education Grants 144
Small School Support Grant 145
Transportation 146
Construction and Debt Service 1465
Quality Standards 146
Action Plans 146
THE IMPACT OF ACT 60 147
Property Taxes 148
Increased Education Revenue 149
Educational Quality 150
Taxpayer Relief 151
Small Schools Report 151
School Consolidation 152
Small Schools Support 153
"Gold Leaf Towns" 154
DISCUSSION 156
APPENDICES 171

LIST OF TABLES

CHAPTER 1
Table 1--The New Wave of School Finance Litigation 6
Table 2--Responses to Questions 1 and 2 Concerning Changes in a State's Funding Formula in Response to State Supreme Court Litigation 9
Table 3--Responses to Questions, 3, 4, and 5 Concerning Changes in or Utilization of Separate Funding Formulas 11
Table 4--Responses to Questions 6 and 7 Concerning Additional Funding to Isolated or Sparsely Populated Schools or Districts Including Additional Revenue for Transportation Costs 13
Table 5--Questions 8 and 11 Concerning School Consolidation 14
Table 6--Responses to Questions 9 and 10 Concerning Supplemental Incentives or Funds Provided by the States to Share Facilities, Resources or Personnel 16

CHAPTER 2
Table 1--Number and Percentage of Schools by Community Type in Tennessee 33
Table 2--Rankings of Tennessee 35
Table 3--Evolution of Tennessee's School Funding 38
Table 4--The Tennessee Small School Systems (TSSS) 43
Table 5--A Timetable of Events Involving the Tennessee Small School System's Lawsuit 47
Table 6--Fiscal Capacity for Education Factors in Measurement 55
Table 7--Calculating the BEP Formula 56

CHAPTER 3
Table 1--Rankings of Wisconsin 90
Table 2--Wisconsin's 3-Tiered GTB 1998-99 State Aid Year 93
Table 3--Correlation Analysis of Education Revenue and Property Taxes for Schools 99
Table 4--Regression Analysis: Education Funding and Property Taxes for Schools 99
Table 5--Equity Statistics for Wisconsin School Finance, 1991-92 and 1997-98: Regular Education (Debt Service Included) 101
Table 6--A Comparison of Revenue Deciles for all Districts & K-12 Districts for Wisconsin School Finance, 1991-92 & 1997-98: Regular Education (Debt Service Included) 103
Table 7--Equity Statistics for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included) 105
Table 8--A Comparison of Revenue Deciles for All Districts & K-12 Districts for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included) 106

CHAPTER 4
Table 1--Rankings of Vermont 125
Table 2--Number and Percentage of Schools by Community Type 127

INTRODUCTION

School finance litigation is a top issue across the States. Just since 1989, supreme courts in 21 states have ruled on the constitutionality of their school finance system. Currently litigation is active in a majority of states and concern over the threat of a possible court challenge or the aftershock of a recent high court decision, effects most of the remaining states.

The new wave of school finance litigation has propelled school finance reform to the top of state policy agendas--creating a positive climate for change. It is forcing states to reexamine all the issues concerning educational equity that they have previously dealt with, but there are important new directions as well. Recent supreme court rulings in Kentucky, Texas, Tennessee, New Jersey, Montana, Vermont, Massachusetts and other states have set out in bold new directions while providing a significant departure from the past. In all of these cases the courts have found that state school finance systems have failed to provide the constitutionally mandated levels of education quality for all students and at all schools. Like the early *Rodriguez* and *Serrano* school finance cou : decisions of the 1970s and their progeny, as a group, these decisions mark a new wave of school finance litigation and have substantially impacted education beyond their borders, propelling a rash of court challenges in their wake.

PURPOSE AND OBJECTIVES

The purpose of this report is to describe the legislative response to state supreme court rulings on rural and small schools and districts. In several states, such as Ohio, Vermont, Tennessee and Kentucky, plaintiffs have been rural and small schools and districts--and issues related to small and rural schools and districts have been prominently featured in litigation.

The report addresses the following questions.

- What has been the reponse of state legislatures to supreme court rulings on school finance?
- How have rural and small schools and school districts been affected by state supreme court rulings and subsequent legislation?
- What has been the experience of rural and small school districts/schools to school finance litigation in selected states; and what has been the impact of subsequent legislation on these school systems?

- What school finance issues continue to plague rural and small school districts in states where litigation has occurred?.

The population for this study consisted of the universe of states where the supreme court has ruled on the constitutionality of the education finance system since 1989. This set of decisions has been referred to as the "third wave" or "new wave" of judicial decisions related to state school finance litigation.

Methodology. This study employed a multi-method approach. First, a survey was sent to all states where the supreme court has ruled on the constitutionality of the state finance system. The purpose of the survey was to ascertain the effects of subsequent legislation on rural and small schools and districts. There was a 100% response rate to the survey questionnaire. Subsequently a report was sent to all states for comment. Comments were incorporated into the final document.

Second, based on survey results, three states were selected for indepth study. They included Tennessee, Wisconsin and Vermont. States were selected based on a purposiveful sample, to include differing areas of the country, states where the system was upheld and overturned, and states that reported either a great deal of legislative activity following the high court decision or none at all.

The second phase of analysis also consisted of a review of the relevant literature and a review and analysis of the supreme court opinions in select states. In addition, approximately 40 individuals, selected on a positional or reputational basis were interviewed and additional data analysis was completed. The attempt was made to overlap findings from interviews, document analysis and statistical information. The study proceeded in three phases: exploration, description and verification.

Limitations. It is important to note that because of the complexity involved in school finance and the law, and the briskness of which legislative and litigation are occuring across the states, the attempt to define a parsimonious set of effects of litigation on rural and small schools is necessarily fraught with numerous difficulties and threats to both reliability and validity. Thus, the focus and intent herein, was to develop a basic set of findings by state, include thick descriptive analysis of important contextual and social variables, and necessarily limit the data analysis to key questions. The final case studies presented, therefore, are neither exhaustive nor all-inclusive.

ORGANIZATION OF THE REPORT

The report is organized into four chapters.

- Chapter I provides the results of the Survey of the States.
- Chapter II discusses the State of Tennessee,

- Chapter III provides a case study of Wisconsin.
- Chapter IV, provides a case study of Vermont.

CHAPTER 1

SCHOOL FINANCE LITIGATION AMONG THE STATES IMPACT ON FUNDING RURAL AND SMALL SCHOOLS: *A SURVEY OF THE STATES*

Deborah A. Verstegen
and
Andrew Grider

This is a watershed era in education as the states and the nation move from the old equity and adequacy of basic skills and minimums to the new equity and adequacy of excellence for all children at all schools and the achievement of the national education goals. This historic shift is being driven by the requirements of the knowledge society and global economy, and is reflected in the education sector by two major forces: the passage of the national education goals and the groundswell of school finance litigation that is sweeping the states.[1]

For the first time in the nation's history, ambitious national education goals have been created, adopted and codified into law propelling standards-setting and assessment activities among the fifty states. The goals would bring all students to high levels of thinking and problem solving in e.g., English, mathematics, science, geography and history--and have the U.S. rank first in the world in mathematics and science.

Second, after years of relative dormancy, the issue of equalizing funding among school districts within a state has emerged once again. Just since 1989, state supreme courts in 21 states have issued rulings on the constitutionality of their education finance system. In 11 states the finance system was overturned; in 10 states it was upheld.[2] Currently litigation is active in a majority of states and concern over the threat of a possible court challenge or the aftershock of a recent high court decision, affects most of the remaining states.

The new wave of school finance litigation has propelled school finance reform to the top of state policy agendas--creating a positive climate for change. It is forcing states to reexamine all the issues concerning educational equity that they have previously dealt with, but there are important new directions as well. In some states issues of adequacy have conjoined equity issues as a basis for judging the constitutionality of the school finance system; in others finance reform has served as a lever for broadscale change and improvement; in still others, funding for special populations--such as special education; or special school systems--such as urban and rural districts, have conjoined overall concerns about the constitutionality of disparate funding plans.

This research addresses the legislative response to rural and small schools/districts in the aftermath of recent school finance litigation. Rural/small school districts have been prominent among plaintiffs challenging the constitutionality of the state's finance system in several states, including Virginia, Tennessee, Kentucky, Wyoming, Vermont and Ohio. State high court decisions have also addressed the unique funding challenges faced by rural and small school systems.[3]

Despite the rash of litigation, there is little or no research examining its effects on schools and school districts located in rural and small districts across the country. This was the focus of this study. Several questions were examined, including: What issues are prominent in the new wave of school finance litigation? How have these issues impacted rulings concerning rural and small schools and school systems? How have legislatures responded to these issues? What finance policies have been instituted related to rural and small school districts? To what extent have the goals of equity and efficiency been achieved?

To respond to these questions, several lines of inquiry were pursued, states were surveyed to determine the legislative response to school finance litigation. The survey focused on: (1) the methods by which states finance rural and small schools and school systems and (2) the impact of litigation on rural and small schools/districts as related to state school finance systems. States where a finance decision has recently been rendered served as the basis for this analysis.

There have been 21 state high court decisions since 1989 (Table 1). This set of court cases has been referred to as the "third wave" or "new wave" of judicial decisions related to state school finance systems. According to Thro, judicial activity in school finance has occurred in three "waves", although overlaps and caveats are present. In the first wave of school finance litigation (1960-1972), plaintiffs have alleged violations of the equal protection clause of the U.S. Constitution. Court decisions from 1972-1988, the second wave of activity, were based on equity guarantees in state constitutions, education articles or both. In the "new wave" of school finance litigation, beginning in 1989, plaintiffs have generally alleged violations of the state constitution based on direct application of the education article and issues of adequacy have accompanied traditional equity arguments.[4]

This recent spate of high court rulings comprised the backdrop for the research effort and delineated the state's of interest for the survey. The overarching focus of the research effort was to determine the impact of school finance litigation on finance policy for rural and small schools and school systems.

Table 1. The New Wave of School Finance Litigation (Activity Since 1989).

States in Which the School Finance System Has Been Ruled Unconstitutional by the State's Highest Court:

Arizona*-Roosevelt Elem. School Dist. v. Bishop, 877 P.2d 806 (1994).
Kentucky-Rose v. Council for Better Education, 790 S.W.2d 186 (1989).
Massachusetts-McDuffy v. Sec'y of the Exec. of Education, 615 N.E.2d 516 (1993).
Montana-Helena Elementary School District No.1 v. State, 769 P.2d 684 (1989). *modified in* Helena Elementary School D. 1 v. State, 784 P.2d 412 (1990)(delaying effective date of decision).
New Hampshire-Claremont School District et al. v. Governor et al., 703 A.2d 1353 (1997).
New Jersey-Abbott v. Burke, 575 A2d 359 (1985); Abbott v. Burke, 575 A.2d 359 (1990); Abbott v. Burke, 643 A.2d 575 (1994); Abbott v. Burke, 693 A.2d 417 (1997).
Ohio-DeRolph v. State, 677 N.E.2d 733 (1997).
Tennessee-Tennessee Small School Systems v. McWherter, 851 S.W. 2d 139 (1993).
Texas-Edgewood Indep. School Dist. v. Kirby, 777 S.W.2d 391 (1989); Edgewood Indep. School Dist. v. Kirby, 804 S.W.2d 491 (1991); Edgewood Indep. School Dist. v. Meno, 893 S.W.2d 450 (1995).
Vermont-Brigham v. State, 692 A.2d 384 (1997).
Wyoming-Campbell Co. School Dist. v. State, 907 P.2d 1238 (1995).

(Note: Arizona had the capital outlay provisions of the finance system found unconstitutional; Alabama's high court stayed the lower court's remedy decision.)

States in Which the School Finance System Has Been Challenged and Upheld by the State's Highest Court

Alaska-Matanuska-Susitna Borough Sch. Dist. v. State, 931 P.2d 391 (1997).
Illinois-Committee for Educational Rights v. Edgar, 672 N.E.2d 1178 (1996).
Kansas-Unified School District 229 et al. v. State, 885 P.2d 1170 (1994).
Maine-School Admin. Dist. No. 1 et al. v. Commissioner, 659 A.2d 854 (1994).
Minnesota-Skeen v. State, 505 N.W.2d 299 (1993).
North Dakota*-Bismark Public School #1 v. State, 511 N.W.2d 247 (1994).
Oregon-Coalition For Equitable School Funding v. State, 811 P.2d 116 (1991).
Rhode Island-Pawtucket v. Sundlan, 662 A.2d 40 (1995).
Virginia-Scott v. Commonwealth, 443 S.E.2d 138 (1994).
Wisconsin-Kukor v. Grover, 436 N.W.2d 568 (1989).

(Note: Majority (3) ruled in favor of the plaintiffs but North Dakota requires 4 justices to declare a statutory law unconstitutional. Nebraska supreme court upheld the dismissal of an appeal because the case didn't state a cause of action, but there was no ruling on the constitutionality of the school finance system.)

Source: D. Verstegen, University of Virginia 1/1/99

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METHODOLOGY AND ANALYSIS

A survey of states regarding the current financing practices that affect small and rural school districts was developed and mailed to the chief state finance officer in each state department of education in October 1998. A second survey was sent to nonrespondents in December 1998. Follow-up phone interviews took place in January and February 1999 when a draft summarizing survey responses was sent to participants and outside experts for review and comment. All responses were based on self-reported information provided by state departments of education.

The twenty-four states that were surveyed included all states where the state's highest court has ruled on the constitutionality of the state finance system since 1989; also, three additional states of interest were included as part of a purposeful sample--Nebraska, Oklahoma, and West Virginia.

The survey was adapted from previous work by Bass;[5] it consisted of questions relating to the effects of the State Supreme Court decision on the education financing system, state funding of small and rural schools/districts, as well as the state's effort to consolidate schools and school districts over the past ten years.

Questions were formatted to elicit a *Yes* or *No* response and to delineate the number of consolidations of schools or districts within the state since 1989. Additional documents were also requested; they included reports generated within states and state statute related to financing including special provisions related to rural/small schools/districts.

The survey consisted of the following questions:

1. Has your state changed its funding formula as a result of recent litigation?

2. Has the recent State Supreme Court decision on school finance affected your state's funding formula for rural or small schools/districts?

3. Does your state utilize a separate formula for driving money to rural school districts that is different from other formulas used for any other type of education program? If the answer is yes, has this separate formula changed as result of legislation enacted within the last ten years? (Please attach an explanation.)

4. Are there adjustments in the school funding formula that provide additional revenue to small schools or small school districts?

5. Are geographically isolated schools or school districts provided with additional funding by the state?

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6. Does the state provide additional transportation funding for schools or school districts based on population sparsity?

7. Does the state provide additional transportation funding for schools or school districts based on distances between schools and other distance variables?

8. Does your state provide supplemental funds as an incentive to consolidate schools or districts?

9. Does your state provide incentives to small/rural schools or districts to share teachers or staff members?

10. Does your state provide supplemental funds to small/rural schools or districts to share facilities or resources?

11. Within the last ten years, how many schools or districts (circle one) in your state have been consolidated?

SURVEY FINDINGS

Responses to the survey were received from all states, thus, there was a 100% response rate from states where a supreme court decision has been rendered since 1989. In addition, three states of interest were added to the analysis; all three also responded to the survey questionnaire. Several states included with their survey response, documents that further delineated state finance formulae and funding mechanisms used for rural and small schools/districts.

For analysis purposes, the questions were sub-divided into five categories relating to the themes of the survey questionnaire and were summarized in tabular form. Table 2 included questions 1-2 that ascertained the effects of state supreme court decisions on a state's funding formula. Questions 3, 4 and 5 summarized in Table 3, pertained to state funding of small and rural schools and districts. Question 3 specifically addressed whether a state utilized a separate funding formula for small, geographically isolated and rural schools/districts and asked if the separate formula was modified as a result of litigation. Table 4, including questions 6 and 7, related to funding for transportation and asked whether supplemental aid was provided by the state to schools and districts based on distance traveled or sparsity. Table 5, which included questions 8 and 11, focused on the number of school or district consolidations within the state over the last ten years and asked if the state provided monetary incentives to encourage consolidation. Table 5 included questions 9 and 10, concerning funding for cooperative arrangements among districts, such as shared personnel and other resources.

Responses to each of the survey questions are provided in Appendix A by state for each question, and by state subdivided into states where a recent court challenge to

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the state school finance system was upheld or overturned. Responses are also discussed below. Appendix B includes a summary of key finance provisions of state finance formula related to rural and small districts, that were summarized from the state responses to an open-ended question on the survey.

FINDINGS

FINANCE SYSTEM CHANGED

As shown in Table 2, of total survey responses to question 1; 42% (nine states) indicated that the funding formula was changed as a result of school finance litigation. Most of the states where the finance system was found unconstitutional, 73% (8 of 11) reported changing the school funding system as a result of litigation (Kentucky, Massachusetts, New Hampshire, Ohio, Tennessee, Texas, Vermont, and Wyoming).[6] Conversely, although the finance system was invalidated, New Jersey, Montana, and Arizona reported that no change had occurred as a result of litigation. It might be deduced from the recent literature, however, that at least one of these states (Arizona) was in the process of altering the finance system to respond to finance litigation; and two states (Montana, New Jersey)[7] changed the system as a result of litigation, survey responses notwithstanding. Thus, in all states where the finance system was ruled unconstitutional, it was changed or is in the process of changing as a result of the state high court decision.

Table 2. Responses to Questions 1 and 2 Concerning Changes in a State's Funding Formula in Response to State Supreme Court Litigation.

Questions	# of States		% of States	
	Yes	No	Yes	No
1. Has your state changed its funding formula as a result of recent litigation?	10	14	42%	58%
2. Has the recent State Supreme Court decision on school finance affected your state's funding for rural or small schools/districts?	7	17	29%	71%
Total Yes Responses for Questions 1 and 2*	12*		42%	

* Nonduplicated count. North Dakota, Tennessee, Vermont, West Virginia and Wyoming answered yes for both questions. Massachusetts indicated question #2 was not applicable to the state.

In contrast, only one of the states where the finance system was upheld by the state's highest court reported changing the funding system as a result of litigation (North Dakota). The other nine states may have, in fact, changed the school funding system

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following litigation, however, this change was not attributed to the court challenge. For example, over the past decade the school finance system has been changed in Minnesota, Wisconsin and other states as indicated in the scholarly literature.[8]

In sum, the impact of a court rulings on school finance reform is apparent in survey responses. States where the system was upheld reported no changes in the funding system (with the exception of North Dakota). Conversely, 73% of the states where the finance system was found unconstitutional reported changing the finance system--and the remaining states were in the process of revising their funding plans in an effort to make them more equitable. Thus, the impact of plaintiff victories on finance reform is apparent in survey responses.

FUNDING CHANGES FOR RURAL AND SMALL SCHOOLS/DISTRICTS

Also shown in Table 2 are the responses of the states related to changes in the funding formula for small or rural schools/districts as a result of litigation. Of the total number of states responding to the survey, 29% (seven states) reported altering the school aid formula for rural and small schools/districts since 1989 as a result of finance litigation (Kentucky, Montana, North Dakota, Tennessee, Vermont, West Virginia and Wyoming).[9] On the other hand, 71% (17) states reported that school finance litigation did not result in changes to the state's funding provisions for rural and small schools/districts.

Of those states altering funding for rural and small schools/districts, in two states (Kansas and North Dakota) the finance system was upheld in recent litigation; conversely in four states (Montana, Tennessee, Vermont and Wyoming), the system was overturned by the state high court.

Thus, overall, half of the states responding to the survey (50%; 12 states), reported either changing the school finance system in response to litigation, or changing the funding formula for rural and small schools/districts, or both, as a result of the recent state supreme court decision.[10] Nine (82%) of these states had the finance systems found unconstitutional by the state's highest court.

Interestingly, Tennessee, Vermont, North Dakota, West Virginia and Wyoming reported altering both the overall state finance formula as well as the funding system for rural and small school districts and attributed the change to a recent State Supreme Court decision. Three of these states had their finance system found unconstitutional. Conversely, two states, Arizona and New Jersey, indicated no alteration in the general funding formula or the formula to rural and small schools/districts as a result of litigation, despite having the finance systems ruled unconstitutional by the State Supreme Court. Both court decisions are unique. New Jersey's high court found the funding system unconstitutional for urban districts only; Arizona's high court found the funding provisions for capital outlay unconstitutional

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and these provisions have not yet been revised. West Virginia has not had a decision on the constitutionality of the finance system since 1989; the system was overturned in 1979.

As discussed earlier, another five states (Kentucky, Massachusetts, New Hampshire, Ohio, and Texas) reported altering the school finance system in response to litigation, but funding for rural and small schools/districts was not affected by the high court decision. Two additional states (Kansas, Montana) reported that litigation did not affect the state funding formula, but that provisions for rural and small schools were affected by the supreme court decision.

ADDITIONAL FUNDING FOR RURAL AND SMALL, AND GEOGRAPHICALLY ISOLATED SCHOOLS/DISTRICTS

Table 3 summarizes questions 3, 4 and 5, related to additional formula funding for rural, small or geographically isolated schools/districts, respectively. As shown in response to question 3, 17% of the states (four) indicated using a separate formula for driving money to rural schools/districts. Of those, three states (Tennessee, Vermont, and Wyoming) indicated tha changes in the separate formula were due to litigation that overturned the state fina..ce system. Another state, Kansas, indicated that it changed the funding system for rural and small schools/districts as a result of litigation but the finance system was upheld by the State Supreme Court. Thus, in all cases, funding for rural/small schools and districts was reported to have been added to the state finance system as a result of school finance litigation.

Table 3. Responses to Questions 3, 4, 5 Concerning Changes in or Utilization of Separate Funding Formulas.

	# of States		% of States	
Questions:	Yes	No	Yes	No
3. Does your state utilize a separate formula for driving money to rural school districts that is different form other formulas used for any other type of education program?	4	20	17%	83%
4. Are there adjustments in the school funding formula that provide additional revenue to small schools or school districts?	14	10	58%	42%
5. Are geographically isolated schools or school districts based on population sparsity?	12	12	50%	5%
Total of 3, 4, and 5	16	8	67%	33%

* Unduplicated count. Sixteen states answered yes to one or more of the questions.

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Questions 4 asked if adjustments were made in the overall finance formula to provide additional revenue to small schools or school districts. Fourteen states, (58%) reported that adjustments to provide additional revenue for small schools/districts were included in the overall state school finance formula. These included the above referenced states of Kansas, Tennessee, Vermont and Wyoming. Additional states included: Alaska, Arizona, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Texas, and West Virginia. The states reporting adjustments were about evenly split between those that had their finance system found unconstitutional and those states where the system was upheld.

Of the ten states that reported not making adjustments for small schools/districts in their funding formula in question 4, seven of the states, Illinois, Maine, New Jersey, Rhode Island, Wisconsin, and Virginia, reported that they neither made changes in their funding system due to litigation, nor did they make adjustments in their funding formulas to provide additional revenue to rural or small schools/districts. Only one of the six states, New Jersey, had a finance system ruled unconstitutional since 1989. In addition, Nebraska, which reported adjustments to provide additional revenue for small schools/districts, has not had a final decision on the constitutionality of the finance system.[11]

Responses to question 5 were split. It asked whether funding was provided based on geographic isolation of schools/districts. Fifty percent of the states (12) reported providing funding adjustments for geographically isolated schools/districts: conversely 50% (12), reported not providing supplemental funding for this purpose.

Of the twelve states that reported providing supplemental assistance for schools/districts based on geographic isolation, 36% (four) had the finance system found unconstitutional, while 45% (five) had the system upheld. Nebraska, Oklahoma, and West Virginia reported providing funding for this purpose as well, but these states have not had a final decision on the constitutionality of the state school funding system since 1989.

TRANSPORTATION

In response to questions 6 and 7 related to the provision of additional funding to offset transportation costs, 50% (12) states reported providing excess funding based on either sparsity or the distance between schools (Table 4). Thirty-eight percent (9) of the states reported providing additional funding based on sparsity (Kansas, Kentucky, Minnesota, Oklahoma, Tennessee, Texas, Virginia, West Virginia and Wyoming); and 29% (seven states) reported that the state provided additional funding based on the distance between schools (Illinois, Maine, New Jersey, Tennessee, Texas, West Virginia and Wyoming). Tennessee, Texas, West Virginia and Wyoming reported that supplemental funding for transportation was provided to school districts based on both sparsity and the distance between schools.

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Of the ten states that had the school finance system upheld, 50% (five of ten) provided additional transportation funding for small and geographically isolated schools/districts based on either distance or sparsity or both. Of the eleven states that had the school finance system declared unconstitutional, 45% (five of eleven states) provided additional funding transportation for small and geographically isolated schools/districts based on either sparsity or distance or both.

Table 4. Responses to Questions 6 and 7 Concerning Additional Funding to Isolated or Sparsely Populated Schools or Districts Including Additional Revenue for Transportation Costs.

	# of States		% of States	
Questions:	Yes	No	Yes	No
6. Does the district provide additional transportation funding for schools or districts based on population sparsity?	9	15	38%	63%
7. Does the state provide additional transportation funding for schools or districts based on distances between schools and other distance variables?	7	17	29%	71%
Total of 6 and 7*	12*	12	50%	50%

*Unduplicated count. Tennessee, Texas, West Virginia and Wyoming answered yes to both questions.

Combining results from questions 5, 6, and 7 reveals that a total of 79% (19) of the states provided some additional funding to isolated, distant or sparsely populated districts for transportation or other costs.[12] Seven of those nineteen states provided additional funding for at least two out of the three categories of isolation/sparsity/distance (Maine, Minnesota, Oklahoma, Tennessee, West Virginia and Wyoming).[13] Minnesota and Oklahoma provided additional funding for isolation and sparsity. Maine provided additional funding for isolation and distance; Tennessee, and Wyoming provided additional funding for sparsity and distance. Texas and West Virginia reported providing additional funding for districts in each of the three categories: isolation, sparsity and distance.

Of the ten states that had finance systems upheld, 80% (8 states) provided additional funding for transportation or other costs to schools or districts as a result of isolation, sparsity, or distance. Only Rhode Island and Wisconsin provided no additional

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support in any of these three categories. Of the eleven states that had finance systems ruled unconstitutional, 73% (8 states) provided additional funds for transportation or other costs to schools or districts as a result of isolation, sparseness, or distance. Only Massachusetts and New Hampshire did not provide funds for any of these three categories.[14] As stated, Nebraska, which has not had a final State Supreme Court decision on its finance system, provided additional funding to schools based on geographic isolation. Oklahoma provided supplemental assistance to school districts based on isolation and sparsity. West Virginia provided funds based on sparsity and distance.

SCHOOL CONSOLIDATION

Table 5 reports survey results for questions 8 and 11. Interestingly, the results showed in question 11 that school district consolidation is continuing at a brisk pace among the states. Ninety-two percent of the states surveyed (22) reported that over the past ten years, 1,105 schools/districts have been consolidated. However, the responses did not indicate the rate at which consolidations were occurring as previous data were not available for comparison purposes.

Fifteen states reported district consolidations, (Illinois, Kentucky, New Hampshire, Minnesota, North Dakota, Oklahoma, Oregon, Virginia, Rhode Island, Massachusetts, Montana, Nebraska, Ohio, Tennessee, Wisconsin) and two states (Vermont and West Virginia) reported consolidations within districts among schools.[15] Five other states reported consolidations, but did not specify whether the consolidations were among schools or districts.[16] Only two states (Arizona and Kansas) reported no school or district consolidations within the last ten years.

Table 5. Questions 8 and 11 Concerning School Consolidation.

	# of States		% of States	
Questions:	Yes	No	Yes	No
8. Does your state provide supplemental funds as an incentive to consolidate schools or districts?	12	12	50%	50%
11. Within the last ten years, how many schools or districts in your state have been consolidated?	1,105			

Of the states reporting consolidations, the eleven states that had their finance systems ruled unconstitutional reported 148 consolidations. The ten states that had their system upheld reported almost three times that amount, 413 consolidations. Only one

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state where the system was overturned reported over 20 consolidations in the past decade. Montana had 90 districts consolidated. Clearly, the states whose finance systems were upheld had a much greater percentage of consolidations, 74%, over the ten year period. Of these, Illinois reported 115 district consolidations; Minnesota, 86; North Dakota, 100; and Oregon, 105. Another state without a final judicial decision, Nebraska, reported 265 district consolidations over the ten year period;[17] Oklahoma reported 65 consolidations, and West Virginia, 208 consolidations.

As has been observed, the previous rate of school/district consolidations within a state necessarily affects the current number of consolidations. It could be surmised that consolidation is occurring fastest in states that have resisted it the longest, litigation notwithstanding, including Montana, Illinois, Nebraska, North Dakota, and Minnesota. Conversely, consolidation may have peaked in other states, such as Kansas, due to past activism in this area. Nonetheless, a total of 1,105 consolidations is surprisingly high and raises important issues for further research. What rationale operating within states supports the consolidation of schools/districts? Are there perceived benefits to equity or efficiency? Have these explanations lost strength in the advent of the 21st century where a growing body of research has found that the industrial era's motto, "bigger is better" has been replaced by the benefits of smallness in organizational arrangements?[18] Has consolidation resulted from attempts to achieve greater equity or efficiency? Has it been a means for struggling schools/districts to achieve fiscal bonuses?

In question 8, that asked states if they provided supplemental funding as an inducement for schools or districts to consolidate, a total of 50% (12) of the states responded affirmatively. The states that provided supplemental funding as an incentive to consolidate included Illinois, Minnesota, Virginia, Wisconsin, Arizona, Massachusetts, Montana, Nebraska, New Hampshire, Tennessee, Texas, and West Virginia. In 73% of the 1,105 consolidations that occurred, supplemental funding was provided as an incentive for schools/districts to consolidate. However, data were not available to determine whether consolidations occurred as a result of supplemental funding incentives or if incentives were provided after the bulk of school/district consolidations had occurred. For example, such incentive funding has recently been enacted in Nebraska, the state reporting the highest number of consolidations over the past decade.

Of the eleven states that had finance systems that were ruled unconstitutional, 55% (6) of those states (Arizona, Massachusetts, Montana, New Hampshire, Tennessee, and Texas) provided supplemental funding as an incentive to consolidate. Of the ten states that were upheld by the State Supreme Court 40% (4) of those states (Illinois, Minnesota, Virginia, and Wisconsin) provided supplemental funding as an incentive to consolidate. Another state, Nebraska, has not yet had a final decision. It has had twice as many consolidations (265) as any other state except West Virginia (208 school consolidations). Oklahoma reported 65 consolidations.

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RESOURCE SHARING

Table 6 summarizes questions 9 and 10 that address the extent to which states provide supplemental funding to schools and districts for the purpose of sharing resources, facilities, or personnel. Only Tennessee and Wyoming reported providing incentives to small and rural schools/districts to share teachers or staff members. Only Wyoming, Oklahoma, and West Virginia made provisions for supplemental funding for small and rural schools/districts to share facilities or resources.

Thus, while 46% (11) of the states surveyed provided supplemental funding to schools and districts to promote consolidation, only 13% (three states) provided funding to districts as an incentive for sharing resources or staff, and only 8% (two states) provided funding to encourage schools or districts to remain intact by means of sharing resources or facilities. In addition, Vermont reported providing additional assistance for distance learning--an area not included in the survey questionnaires.

Table 6. Responses to Questions 9 and 10 Concerning Supplemented Incentives or Funds Provided by the States to Share Facilities, Resources, or Personnel.

	# of States		% of States	
Questions:	Yes	No	Yes	No
9. Does your state provide incentives to small or rural schools/districts to share teachers or staff members?	2	22	8%	92%
10. Does your state provide supplemental funds to small or rural schools/districts to share facilities or resources?	3	21	13%	88%
Total Yes Responses for Questions 9 and 10	3*		9%	

*Wyoming provides supplemental funding to share both personnel and resources.

DISCUSSION

Issues related to efficiency and equity are once again featured in the legislative response to school finance litigation. Although there are caveats, in states where the school finance system has been overturned, funding plans have been overhauled, and supplemental funding for rural and small schools/districts has been provided, likely in an effort to enhance funding equity and adequacy. Conversely, in states where the state finance system has been upheld, funding plans have remained intact, and

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school/district consolidation has been featured, ostensibly in an effort to enhance efficiency by spreading costs over larger operating units.

Thus, based on survey findings, it appears that school finance litigation may have impacted the states in at least two important areas that relate to funding for rural and small schools/districts: (1) in changes to the state finance formula and (2) in the number of district consolidations.

According to survey results, all of the states that had the school finance system found unconstitutional, changed or are changing the school finance system as a result. By contrast, only one of the states whose finance system was upheld by the State Supreme Court reported changing the funding formula as a result of litigation.[19]

That state, North Dakota, is unusual because the majority on the supreme court held that the finance system was unconstitutional but a supermajority was required to overturn the state finance plan, so it was upheld. Taking this into consideration, the impact of court decisions overturning disparate finance systems on finance reform appears strong according to survey results. It may be that states that lost in high courts were quick to appease and states where the finance plan was upheld were quick to deny there was a problem.

In terms of funding for rural or small schools/districts, 36% (4 out of 11) of the states whose finance systems were found unconstitutional, reported changing the funding formula to provide additional revenue for small or rural schools/districts. This is a higher percentage than the 20% (two) of states that reported funding changes for rural and small schools/districts whose finance systems were upheld. Thus, litigation has had more of an impact on funding for small and rural districts when it has been successful in overturning the state funding system than it has had when it failed to find state finance systems unconstitutional. Nonetheless, in only 4 of 11 states whose system was overturned and in only 2 of 11 states where it was upheld did rural schools appear to fare better as indicated by question 2. According to survey findings, in 15 of 21 states where State Supreme courts have issued final rulings (71%), the funding formula for rural schools did not change as a result. Moreover, in only half of the states where rural plaintiffs have been prominently featured, have provisions for rural districts/schools been included in the finance formula as a result; half of these states have reported that funding for rural and small districts/schools has not changed as a result.

This could mean that rural and small schools/districts have had their complaints remedied through overall finance formula changes, rather than through a separate formula, as several states noted funding improvements for rural/small districts were made through the general finance system (Tennessee, Montana). A more pessimistic conclusion is that legislative action has failed to address the concerns of rural schools and districts in the aftermath of litigation, possibly due to their limited representation in legislative bodies.

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Finally, the question remains whether "altering" the finance system has been beneficial to rural schools or districts. For example, the survey did not ascertain whether changes in the funding system resulted in more or less revenue to rural areas. Perhaps, enhanced funding overall benefitted rural and small schools/districts by lifting their base amount of support and providing a more adequate support level to meet their needs. Also, due to various definitions of rural and small schools/districts across the states, it is difficult to say with certainty that all rural schools/districts benefitted or were disadvantaged by funding changes that resulted from litigation. It is possible that rural schools/districts in the aggregate were better off as a result, but that a large number were worse off, as has been the case in Nebraska, according to observers.

In terms of consolidation, the states whose finance systems were upheld accounted for 74% (413 school or district consolidations) of the total number of consolidations of all the states that have had a final decision on the constitutionality of the state finance system. In systems that have been upheld, a focus on consolidation may have occurred ostensibly in an effort to increase efficiency by spreading costs over a larger population/area, or as a means for small districts to garner more state funds.. As the survey shows, a majority of these consolidations took place in states that provided incentives for schools or districts to consolidate (71%). However, more information is needed to determine whether consolidation has been induced by other means than monetary incentives given the nearly 315 schools/districts that have been merged without financial incentives.

Importantly, those states where rural issues have been prominent in litigation, such as Tennessee, Vermont and Wyoming, changes aimed at equity have been featured for rural and small schools/districts. Reportedly, these three states not only changed the funding formula as a result of litigation, but also they changed the separate funding formula for small and rural schools/districts. All three states also made adjustments in their funding formula to provide additional revenue to small schools or districts.

According to survey results, Tennessee and Wyoming are probably the most diligent in attempting to provide equity among rural and small schools and districts through the provision of additional financial assistance. Both states provided not only additional revenue to small schools or districts, but also provided supplemental funding for transportation expenses based on distance. Wyoming also provided supplemental funding for sparsity. Both states are unique, however, because they also provided incentives for schools and districts to share teachers or staff. In addition, Wyoming included fiscal incentives for schools or districts to share facilities and other resources, as did Oklahoma.

Tennessee provided school/district consolidation incentives; but only four districts have been consolidated within the last ten years. Wyoming has had two district consolidations in the same period. Twelve other states reported five or fewer consolidations.[20] In many states, however, district consolidation data may be misleading. Mainly in the South, where there are countywide districts, most

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consolidation occurs among schools, not districts. Thus, the fact that there are only five or fewer consolidations among districts in Kentucky or Tennessee means a lot more than the fact that there were that few in New Hampshire.

Based on the survey results, two other states whose finance systems have been ruled unconstitutional, Montana and Texas, made supplemental financial provisions for rural and small schools/districts. Both states changed their funding formulas as a result of litigation, and both states provided adjustments in their funding system for small and geographically isolated schools and districts.

Like Montana, Texas also provided additional funding for transportation based on sparsity and distance traveled. Both states, however, have encouraged a large number of school or district consolidations over the last ten years, by providing funding incentives for that purpose, which has resulted in 21 school or district consolidations in Texas and 90 in Montana.

For states whose finance systems were upheld in state supreme courts, Kansas has provided a variety of supplemental funding sources for rural and small schools/districts. Kansas and North Dakota were the only states that had the finance system upheld that reported changing the funding system for rural and small schools/districts as a result of litigation. Additionally, Kansas also utilized a separate formula for driving money to rural schools or districts. Though several states whose finance systems were upheld by the State Supreme Court provided additional funding based on size and isolation, Kansas, Virginia and Minnesota were the only three states that provided sparsity adjustments. Only two other states (Illinois, Maine) contributed supplemental transportation funds for schools or districts based on distance.

Finally, despite the large number of school or district consolidations among states whose finance systems were upheld, Kansas and Arizona were the only two states from the twenty-four state survey that reported no school or district consolidations within the last ten years.

As stated, an interesting survey result is that states whose finance systems were upheld had a much greater percentage of consolidations, 72%, of total over the ten year period. Of these, Illinois reported 115 district consolidations; Minnesota, 86; North Dakota, 100; and Oregon, 105. Although Nebraska has not had a final decision regarding the constitutionality of its finance system, clearly its 265 district consolidations by far outweighed other states. It had more than twice the number of consolidations of any other state. Likewise, another state without a final decision, West Virginia, reported 208 school consolidations.

On the other hand, many states (52%; 11) that have recently had a school finance decision, provided additional revenue for small schools and districts; additionally, both Oklahoma and Nebraska reported funding earmarked to these purposes as well.[21] Equally as encouraging is the number of states that provide some additional funding to offset the costs related to school or district sparsity, isolation, or distance.

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A clear majority of surveyed states, 79% (19 out of 24), provided supplemental funding in one or more of these categories. Importantly, it is especially clear that states whose finance systems have been ruled unconstitutional have provided additional funding in these areas with only two exceptions (Massachusetts and New Hampshire).

One area of concern, however, is the limited number of states that provided incentives for schools or districts to share resources, facilities, or personnel.

State provision of additional funds for the excess costs that rural and small schools/districts experience may contribute to the adequacy and equity of support for small and rural school/districts. However, the survey did not provide information on the amount of funding provided and the costs of funding rural and small schools and districts so adequacy and equity of the funding system could not be determined, despite the improvements the findings suggest in these areas for certain states. Nonetheless, in most states whose finance systems have been ruled unconstitutional, equity and adequacy are apparently being addressed among schools and districts based on survey results. Perhaps as their efforts become more widely known and are presented to other states, others will follow their lead.

Conversely, where the finance system has been found unconstitutional, school/district consolidation appears to have been the response, perhaps in an effort to achieve more efficiency by spreading costs over larger populations and increasing tax bases. However, as recent research shows, equitable funding for rural and small schools and school districts, may be more efficient--given the enhanced outcomes small schools/districts have achieved.22 That is, although small and rural districts and schools may cost relatively more to operate given their small student population, on average, research is showing that such schools/districts achieve enhanced student outcomes. Quality education is associated many benefits to society at large including higher incomes that result in increased tax support, lower crime rates and lower rates of dependency.

Thus, although it is too soon to draw final conclusions concerning the legislative response to rural funding issues and concerns, the survey data suggest the promise of a legal victory for increasing equity and efficiency in schools and districts across the nation. Still, these trends are less clear for rural and small schools/districts; in 18 of 24 states funding for rural and small schools has apparently remained unaffected.

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REFERENCES

1. This section draws on: Verstegen, D. A. (1998). Judicial Analysis During the New Wave of School Finance Litigation: The New Adequacy in Education. Journal of Education Finance, 24 (1), 51-68.

2. In North Dakota a majority ruled that the finance system was unconstitutional but it takes a supermajority to overturn the system; in Maine, wealthy districts brought the challenge.

3. See, for example, Salmon, R. G. (1990). State School Finance Programs and Their Influence on rural Schools and School Districts. Journal of Education Finance, 16, 130-147. Dayton, J. (1998). An Examination of Judicial Treatment of Rural Schools in Public School Funding Equity Litigation. Journal of Education Finance. 24, 179-205.

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6. Although New Hampshire has not changed it funding formula to date, it was reported that the current legislature will adopt a new formula with an anticipated implementation date of July 1, 2001.

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Funding Issues in North Dakota. Educational Considerations, 25(2), pp. 54-56. Guy, M. J. (1998). Financing Education in Minnesota: A Tradition of Progress, 1971-1998. Educational Considerations, 26(2), 15-20.

9. West Virginia is included in total survey response only. Its finance system was ruled unconstitutional in 1979.

10. Tennessee, Vermont, and Wyoming are only counted once in the state total because those three states responded positively to both questions 1 and 2.

11. The Supreme Court rejected the lawsuit; see 506 N.W.2d 349.

12. The total does not double count Maine, Minnesota, North Dakota, Tennessee, Texas, and Wyoming, who answered positively to two or more questions.

13. Wyoming included these factors as part of its overall formula.

14. Vermont includes funds for extraordinary expenses based on sparsity or size that are provided to three towns.

15. Illinois did not specify district or school consolidations; however, they did indicate 115 consolidations or annexations. In the documents provided by the State of Illinois regarding school district reorganization, 111 school districts were reported as consolidations occurring during the last third of the 1980's through 1998.

16. Five states reported consolidations but did not specify whether they were school or district consolidations. Those states included: Alaska, Maine, New Jersey, Texas, Wyoming.

17. Keller, B. (1998). Nebraska Reforms Fuel District Consolidations, Education Week, 18(2).

18. See, for example, Verstegen, D.A. "Efficiency and Economies of Scale".

19. North Dakota's finance decision was unusual because the majority found the system unconstitutional but the system was upheld because it takes a supermajority to declare the system unconstitutional. In this, the response may be more in keeping with the findings of revised finance systems in states where the system was overturned.

20. The twelve other states reporting five or fewer consolidations included Alaska, Kansas, Maine, Rhode Island, Virginia, Wisconsin, Kentucky, Arizona, Massachusetts, New Jersey, Ohio and New Hampshire.

21. Verstegen, D. A. (1990). Efficiency and Economies of Scale Revisited: Implications for Financing Rural School Districts. Journal of Education Finance, 16(2), 159-179. Bass, G. & Verstegen, D. A. (1992). Informing Policymakers About the Impact of State Funding

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APPENDICES

Appendix A. The Impact of School Finance Litigation on Rural and Small Schools/Districts--Survey Responses

Appendix B: Provisions for Rural and Small Schools in State Finance Formula--Survey Results

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APPENDIX A The Impact of School Finance Litigation on Rural and Small Schools/Districts--Survey Responses

SURVEY QUESTIONS		FINANCE SYSTEM UPHELD													FINANCE SYSTEM UNCONSTITUTIONAL										
	Ans	AK	IL	KS	ME	MN	ND	OR	RI	VA	WI	sum	%	AZ	KY	MA	MT	NH	NJ	OH	TN	TX	VT	WY	sum	%
1 Has your state changed its funding formula as a result of recent litigation?	Yes						1					1	10%		1	1		1		1	1	1	1	1	8	73%
	No	1	1	1	1	1		1	1	1	1	9	90%	1			1		1						3	27%
2 Has the recent State Supreme Court decisions on school finance affected your state's funding formula for rural or small schools/districts?	Yes			1			1					2	20%				1				1		1	1	4	36%
	No	1	1		1	1		1	1	1	1	8	80%	1	1	1		1	1	1		1			7	64%
3 Does your state utilize a separate formula for driving money to rural school districts that is different from other formulas used for any other type of education program?	Yes			1								1	10%								1		1	1	3	27%
	No	1	1		1	1	1	1	1	1	1	9	90%	1	1	1	1	1	1	1		1			8	73%
4 Are there adjustments in the school funding formula that provide additional revenue to small schools or school districts?	Yes	1		1		1	1	1				5	50%	1			1				1	1	1	1	6	55%
	No		1		1				1	1	1	5	50%		1	1		1	1	1					5	45%
5 Are geographically isolated schools or districts provided with additional funding by the state?	Yes	1			1	1	1	1				5	50%	1			1			1		1			4	36%
	No		1	1					1	1	1	5	50%		1	1		1	1		1		1	1	7	64%
6 Does the state provide additional transportation funding for schools or districts based on sparsity?	Yes			1		1				1		3	30%		1						1	1		1	4	36%
	No	1	1		1		1	1	1		1	7	70%	1		1	1	1	1	1			1		7	64%
7 Does the state provide additional transportation funding for schools or districts based on distance?	Yes		1		1							2	20%						1		1	1		1	4	36%
	No	1		1		1	1	1	1	1	1	8	80%	1	1	1	1	1		1			1		7	64%
8 Does your state provide supplemental funds as an incentive to consolidate schools or districts?	Yes		1			1				1	1	4	40%	1		1	1	1			1	1			6	55%
	No	1		1	1		1	1	1			6	60%		1				1	1			1	1	5	45%
9 Does your state provide incentives to small or rural schools/districts to share teachers or staff?	Yes											0	0%								1			1	2	18%
	No	1	1	1	1	1	1	1	1	1	1	10	100%	1	1	1	1	1	1	1		1	1		9	82%
10 Does your state provide supplemental funds to small or rural schools/districts to share resources?	Yes											0	0%											1	1	9%
	No	1	1	1	1	1	1	1	1	1	1	10	100%	1	1	1	1	1	1	1	1	1	1		10	91%
11 Within the last ten years, how many schools (S) or districts (D) in your state have been consolidated	NO.	1	115	0	1	66	100	105	2	1	2	413		0	1	4	90	3	5	1	4	21	17	2	148	
	S/D		D			D	D	D	D	D					D	D	D	D		D	D		S	D		

Note: Question 10: Vermont provides distance learning funds

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		AK	AZ	IL	KS	KY	ME	MA	MN	MT	NE	NH	NJ	ND	OK	OH	OR	RI	TN	TX	VT	VA	WI	WV	WY	SUM	%
1 Has your state changed its funding formula as a result of recent litigation?	Yes					1		1				1		1		1			1	1	1			1	1	10	42%
	No	1	1	1	1		1		1	1	1		1		1		1	1				1	1			14	58%
2 Has the recent State Supreme Court decision on school finance affected your state's funding formula for rural or small schools/districts?	Yes				1					1				1					1		1			1	1	7	29%
	No	1	1	1		1	1	1	1		1	1	1		1	1	1	1		1		1	1			17	71%
3 Does your state utilize a separate formula for driving money to rural school districts that is different from other formulas used for any other type of education program?	Yes				1														1		1				1	4	17%
	No	1	1	1		1	1	1	1	1	1	1	1	1	1	1	1	1		1		1	1	1		20	83%
If the answer is yes, has the separate formula changed as a result of legislation enacted within the last ten years?	Yes																		1		1				1	3	13%
	No	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1		1		1	1			19	79%
4 Are there adjustments in the school funding formula that provide additional revenue to small schools or small school districts?	Yes	1	1		1				1	1	1			1	1		1		1	1	1			1	1	14	58%
	No			1		1	1	1				1	1			1		1				1	1			10	42%
5 Are geographically isolated schools or districts provided with additional funding by the state?	Yes	1	1				1		1	1	1			1	1	1	1			1				1		12	50%
	No			1	1	1		1				1	1					1	1		1	1	1		1	12	50%
6 Does the state provide additional transportation funding for schools or districts based on population sparsity?	Yes				1	1			1						1				1	1		1		1	1	9	38%
	No	1	1	1			1	1		1	1	1	1	1		1	1	1			1		1			15	63%
7 Does the state provide additional transportation funding for schools or districts based on distance?	Yes			1			1						1						1	1				1	1	7	29%
	No	1	1		1	1		1	1	1	1	1		1	1	1	1	1			1	1	1			17	71%
8 Does your state provide supplemental funds as incentive to consolidate schools/districts?	Yes		1	1				1	1	1	1	*							1	1		1	1	1		12	50%
	No	1			1	1	1						1	1	1	1	1	1			1				1	12	50%
9 Does your state provide incentives to small or rural schools/districts to share teachers/staff?	Yes																		1						1	2	8%
	No	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1	1		22	92%
10 Does your state provide supplemental funds to small or rural schools or districts to share facilities or resources?	Yes														1										1	3	13%
	No	1	1	1	1	1	1	1	1	1	1	1	1	1		1	1	1	1	1	1	1	1			21	88%
11 Within the last ten years, how many schools or districts in your state have been consolidated?	NO	1		115	0	1	1	4	86	90	265	3	5	106	65	1	105	2	4	21	17	1	2	208	2		
	S/D			D		D		D	D	D	D	D		D	D	D	D	D	D		S	D	D	S			

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Appendix B: Provisions for Rural and Small Schools in State Finance Formula--Survey Results

Alaska
The formula is weighted in favor of small, isolated sites.

Arizona
Districts with less than 600 average daily membership are considered small and receive special weightings. If they are isolated, they receive additional weightings.

Illinois
Does not apply.

Kansas
To determine the general fund budget a higher budget per pupil is permitted in low enrollment districts.

Kentucky
Support Education Excellence in Kentucky (SEEK) is the funding formula developed as part of the 1990 Kentucky Education Reform Act (KERA). Funding is based on prior year attendance, the number of students eligible for free lunch, the number of exceptional children, transportation cost and is equalized by the state based on relative property wealth and local tax effort.

Massachusetts
Does not apply.

Minnesota
Sparsity revenue - Districts with secondary schools having fewer than 400 pupils in grades 7-12, or elementary schools having fewer than 140 pupils in kindergarten through grade six, located in isolated areas receive sparsity revenue in the general education formula. The amount of revenue for secondary pupils varies as a function of the number of pupils the distance to the nearest high school, and the attendance area. The amount of revenue for elementary pupils varies as a function of the number of pupils enrolled in schools located 19 or more miles from the nearest elementary school.
Transportation sparsity - See MS 126C10, subd. 18. Additional transportation funding for districts with low population density -- allowance per student varies inversely with population density.
Exemption from limit on referendum revenue for districts qualifying for sparsity aid (MS 126C17, subd. 3). This is local leeway with voter approval.

Montana
Elementary schools with fewer than 300 pupils and high schools with fewer than 600 pupils receive state aid baed on a foundation program schedule that provides greater per pupil payments for smaller schools with per pupil payments decreasing as school size increases.

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Declining payment scale. Elementary schools with more than 300 pupils and high schools with more than 600 pupils receive a flat rate per student which is the lowest rate on the declining scale.
There is no specific provision for small and rural schools in the funding formula. The "basic entitlement" per school district does reult in higher per pupil state funding for smaller schools

Nebraska
To districts that qualify for equalization aid, the percentage of 10%, 20%, 30%, or 40% is added to the total basic need calculation for districts that have four, three, two, or one person per square mile, respectively.

New Hampshire
Does not apply.

New Jersey
Does not apply.

North Dakota
High schools with up to 550 pupils receive up to a .635 extra weighting per pupil; one-teacher elementary schools receive a weighting of 1.29; small elementary schools are weighted between .925 and 1.045.

Ohio
Extra per pupil subsidy for three small Lake Erie Island school districts.

Oregon
Approved necessary small schools of less than100 students. Elementary schools must be more than 10 miles from the nearest elementary school. High schools must be more than 15 miles from the nearest high school. Partially suspended for 1989-1990.

Oklahoma
Density factor is accounted for in transportation supplement. School district size of 500 or less is weighted in the foundation formula.

Rhode Island
Does not apply.

Tennessee
Does not apply, other than equalization of state funds based on comprehensive measures of local tax base (property, sales, etc.)

Texas
Basic allotment is increased by a percent proportional to the difference between a district's ADA and 1600 ADA. Percent increase is greater for districts having over 300

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square miles. Districts having below 130 ADA use a minimum ADA depending on actual ADA, grades taught, and the distance to nearest schools.
The above description is still valid. However, in 1995-96, the state began an adjustment for mid-sized districts (those below 5,000 ADA) that may impact some districts that could be considered small or rural, depending on criteria. See Section 42.103 in attached materials.

Vermont
A small school is defined as having a two-year average combined enrollment of fewer than 100 students or an average grade size of 20 or fewer students. A sliding scale multiplier is used to reduce the impact of grade size reduction on the amount of money received by the school district.

Wisconsin
Does not apply.

Wyoming
If there is an increase of 10% or 100 ADM in any district, instructional units will be recalculated. The ADM count is based on the 60th day of school.

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CHAPTER 2

STATE EDUCATION FINANCE REFORM IN TENNESSEE: THE EFFECTS OF STATE SUPREME COURT LITIGATION ON SMALL AND RURAL SCHOOLS

Andrew Grider

This case study examines the background of Tennessee's school funding prior to legislation and the impact of the legislation the funding of small and rural school districts in the State. After a brief review of the method, the first section provides a profile of the State of Tennessee based on economic, demographic, and educational factors. The section also provides national comparisons with Tennessee on a variety of indicators.

The second section examines the school funding system in Tennessee and the associated problems. A brief historical overview of the state funding system precedes an in-depth review of the foundation program prior to the Tennessee Small School Systems lawsuit and the inequities that it produced that ultimately led to the lawsuit. The third section provides an analysis of the Chancery, Appellate, and Tennessee Small School Systems State Supreme Court decisions. This section also provides descriptive information obtained through interviews that details the inequities of the funding system experienced by small and rural schools. Interview datum also provide first-hand information regarding the proceedings before during and after the respective trials.

The fourth section provides a description of the legislative struggles in the development and eventual implementation of the current state funding system. The effects of litigation based on the new foundation program are presented through the eyes of those persons interviewed and are supported through the literature. A detailed overview of the current funding program is also provided. The fifth section presents the political and economic conditions currently present in Tennessee and discusses the impact of these conditions on school funding in Tennessee. A brief conclusion follows this section.

METHODOLOGY

The objectives of the study were to investigate the circumstances surrounding state finance litigation and the resulting impact of state finance litigation on the funding of small and rural schools in the State of Tennessee. Tennessee is unique because it was one state in which the plaintiffs represented small and rural schools in the state. Thus, the court case specifically addressed the funding of small and rural schools in Tennessee.

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Data collection occurred over a six-month period and included interviews, document collection, and collection of relevant literature. After a review of the literature, interviews were conducted with school district superintendents, officials in the Tennessee Department of Finance, state finance experts, and participants in the litigation process. Due to changing roles of officials within the state since the time of Tennessee Small School Systems v. McWherter in 1993, several participants interviewed provided information from the vantage of their respective positions at the time of litigation and their current positions. To protect the identity of those participants interviewed, names and specific roles have been omitted.

Interviews. A total of thirteen people were interviewed including six current superintendents. All of the superintendents interviewed are from school districts that were members of the Tennessee Small Schools Systems. Of the six superintendents interviewed, four of them were superintendents in small or rural school districts at the time of the original litigation and all of them were superintendents prior to the latest Tennessee Small School Systems v. McWherter Supreme Court decision in 1995. Two of the superintendents interviewed participated in the original litigation process.

Of the remaining seven people that were interviewed, two work for the Division of Finance, Accountability, and Business with the Tennessee Department of Education. Two other persons interviewed work for divisions within the office of Comptroller of the Treasury: the Division of Property Assessments and the State Board of Equalization. One person interviewed is a finance expert and has written several articles concerning the financing of public education in Tennessee, while another works for the Tennessee Advisory Commission on Intergovernmental Relations. A legal expert was also interviewed who was involved in the original lawsuit.

All of the participants were interviewed by telephone, and a semi-open interview format was used as a guide in developing an open-ended conversation. A list of interview participants and an interview guide used for the interviews is contained in appendices 1 and 2 respectively. After each interview, a copy of the transcript was typed and sent to the participants to check for accuracy and clarity before the final report was completed.

Document Collection. Documents were collected from the state as part of the initial research. Additional documents were collected as needed, such as a copy of the Motion for Order regarding the teachers' salary equity issue. Several publications written and published by the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) were also obtained and included in the final write-up. Additionally, two memos regarding the teachers' salary equity issue were read over the telephone by a Department of Education official and a superintendent whose school district is a member of the Tennessee Small Schools for Equity. Articles from *Education Week* online and *The Tennessean* online were used to augment data collection.

Inductive analysis was used as the means for evaluating data consistent with guidelines of qualitative research developed by Patton (1990).[1] Interview transcripts were read and reread allowing themes to emerge. Member checks were conducted with each of the participants and interview responses were cross checked with document analysis.

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Finally, a nationally recognized education finance expert provided guidance and recommendations during data collection, analysis, and writing. A case record was not established as observations were not included in the data collection process.

A PROFILE OF TENNESSEE

DEMOGRAPHICS

Tennessee is a unique state in terms of its geographic and demographic features. Although it ranks 34th among U.S. states in land area with 41,219 square miles, the State ranks 17th in total population; it averages 130.2 people per square mile.[2] According to the Census Bureau, in 1997 Tennessee had a population of 5,368,198. Although Tennessee has 95 counties, 68% of Tennessee's total population lives in 27 of those counties that comprise seven metropolitan areas.[3] Four of the metropolitan areas comprise counties adjoining other states, which is consistent with the geographical location of the State. Tennessee borders seven other states and has more border states than any other state in the U.S.

Despite the large number of Tennessee residents proportional to the State land area, Tennessee also has a large number of small and rural areas. Tennessee's 95 counties contain 138 school districts, 51 of which are considered small districts and 49 are considered rural districts according to 1995-96 data from the National Center for Education Statistics.[4] According to these 1996 data, there were 301 schools (19.2%) in small towns and 374 schools (23.9%) in rural areas in the State of Tennessee.

Nationally, 12.8% of schools were located in small towns and 25% located in rural communities.[5] A comparison of Tennessee and national locale indicators is located in Table 1. Though nationally there was an average of 1.1% more rural schools than in Tennessee, there were more small town school districts in Tennessee than the national average. According to the Tennessee Economic Development Center, population in Tennessee is expected to grow at an average of 13.53% from 1990-2010. Of the top ten fastest growing counties, eight of those counties are classified by NCES as small town or rural school districts.[6]

By the year 2000 Tennessee's population is expected to increase to 5.7 million people, ranking 16th among U.S. states. By 2025, the state is projected to be the 15th most populous with 6.7 million people. Tennessee is expected to gain 97,000 people by the year 2025 through net international migration, people coming to Tennessee from other countries, with Tennessee ranking 29th among all states and the District of Columbia. The State is expected to gain 845,000 people through net internal migration, people moving to Tennessee from other states, with Tennessee ranking 6th among all states and the District of Columbia.[7]

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Table 1: Number and Percentage of Schools by Community Type in Tennessee.

Community Type	Number of Schools, U.S.	Percentage of Schools, U.S.	Number of Schools, TN	Percentage of Schools, TN
Large City	10,945	12.7	285	18.3
Midsize City	12,451	14.5	232	14.8
Urban Fringe-Large City	21,032	24.4	154	9.8
Urban Fringe-Midsize City	7,688	8.9	184	11.7
Large Town	1,469	1.7	33	2.1
Small Town	10,998	12.8	301	19.2
Rural	21,475	25.0	374	23.9
Total	86,058	100	1,563	100

Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data, School Universe, 1996-97; U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD) School Years 1991-92 through 1995-96, NCES 98-209

The proportion of Tennessee's population that is classified as elderly (65 and over) will increase from 12.5% in 1995 to 20.3% in 2025. As the elderly population increases however, the percentage of youth (under 20 years old) will decrease from 27.7% in 1995 to 23.8% in 2025. Nationally, Tennessee ranks 37th in youth population in 1995 and is expected to rank 43rd in 2025.[8]

Non-Hispanic Whites will comprise 78.6 percent of the population by 2025, down from 82% in 1995. Non-Hispanic African Americans will increase from 16.2 % in 1995 to 18.2% in 2025. The Non-Hispanic Asians and Pacific Islander population will increase from 0.8 % in 1995 to 1.4 % in 2025. The Hispanic population will also increase from 0.9 % in 1995 to 1.5 % of the State's total population in 2025.[9]

ECONOMIC INDICATORS

The State of Tennessee has experienced significant economic growth within the last decade according to the Tennessee Department of Employment Security, Research, and Statistics Division. The annual employment growth rate during the 11-year period from 1994-2005 for Tennessee will average almost 2.4 percent, considerably higher than the 1.7 percent rate projected growth rate for the nation as a whole during the same period. The economy will generate nearly 674,500 new jobs by the year 2005. Overall,

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employment in the state will increase by 26 percent from the 1994 employment level of 2,610,630.[10]

Residents of Tennessee have also experienced an increase in per capita income. From 1990 to 1997 per capita income increased (in constant 1992 dollars) from $17,574 to $20,424 moving closer to the national average. Tennessee ranked 36th in 1990, and 33rd in 1997 in per capita income in the U.S.. Median household income also increased (in constant 1996 dollars) from $27,121 in 1990 to $30,790 in 1996. In 1990, Tennessee ranked 47th in median household income with the national average of $35,945, and in 1996 ranked 40th with a national average of $35,492.[11] During the last six years, from 1990-1996, four of the seven Tennessee Metropolitan Statistical Areas (MSAs) were among the 20 highest per capita personal growth income areas in the country. The Jackson, Tennessee MSA was ranked fourth and the Nashville MSA was ranked fifth of over 300 MSA's in the U.S..[12]

Unemployment rates have been relatively low as well falling from a high of more than 5.5% in June of 1997 to 4.1% in March of 1999, below the national average of 4.3%. Across the state unemployment rates dropped in 85 counties with five counties remaining the same and six counties increasing their unemployment rates. Only two of the 95 counties showed double digit unemployment figures for the month of March 1999.[13]

In addition to the strong employment figures, Tennessee has relatively few persons below the poverty level compared to other states. In 1990, 16.9% of Tennessee's population was below the national poverty level, ranking 8th among all states and the District of Columbia. Despite a slight decrease to 15.9 %, Tennessee dropped in state comparisons in 1996 to 13th with 15.9 % of the population below the poverty level.[14]

GOVERNMENT FINANCE

Despite the strong economic indicators, however, the State of Tennessee ranks low in its ability to tap economic resources. According to the National Education Association, in 1993-1994 state and local revenue generated $2,589 per capita, which ranked the state 48th among all states and the District of Columbia as shown in Table 2. The State of Tennessee is unique in that it is only one of nine states that does not tax personal income from wages.[15] Consequently, Tennessee relies heavily on the sales tax at 6.0 % and provides the localities the option to raise another 2.75 %. As a result, the State ranked 8th nationally based on revenue generated on sales per capita. In 1993-94 the State generated $400 per capita from state and local property tax, which ranked 42nd among the states, and Tennessee generated $19 per capita from individual income tax, dividend income only, which ranked nationally at 43rd among the states and the District of Columbia.[16] In 1996 the state generated $2,357 in general revenue per capita ranking 47th among U.S. states and DC.[17]

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Table 2. Rankings of Tennessee a/

TENNESSEE	Rank	State	U.S.	Table
DEMOGRAPHICS				
Resident population in 1995 (in thousands)	17	5,256	262,755	(A-1)
Percent age 5 to 17	37	18.0%	18.7%	(A-6)
Percent age 18 and over	11	75.1%	73.8%	(A-7)
Percent age 65 and over	29	12.5%	12.8%	(A-8)
ECONOMY				
Personal income in 1995				
Total (in millions)	19	$147,415	$6,137,879	(D-1)
Per capita	32	$ 22,501	$ 23,348	(D-3)
As % of national average	32	91.2%	100%	(D-4)
Per pupil in ADA	28	$150,899	$ 150,452	(D-12)
GOVERNMENT REVENUE				
State and local general revenue from own sources in 1993-94 Per capita	48	$ 2,589	$ 3,399	(E-2)*
Per $1,000 of personal income	49	$ 129	$ 153	(E-3)*
State and local tax revenue in 1993-94 Per capita	47	$ 1,759	$ 2,402	(E-4)*
Per $1,000 of personal income in 1994	50	$ 88	$ 108	(E-5)*
Tax revenue by major source in 1993-94 Per capita				
Local property tax	42	$ 400	$ 725	(E-7)*
State individual income tax	43	$ 19	$ 478	(E-13)
State general sales tax	8	$ 639	$ 504	(E-14)
Per $1,000 of personal income in 1993-94				
State and local property tax	44	$ 20	$ 34	(E-9)
State individual income tax	42	$ 1	$ 20	(E-15)
State general sales tax	8	$ 30	$ 22	(E-16)
GOVERNMENT EXPENDITURE				
State general expenditures in 1993-94 Per capita	45	$ 2,393	$ 4,125	(G-1)
Per $1,000 of personal income in 1992	46	$ 166	$ 186	(G-4)
State and local expenditures by major function in 1993-94 Per capita				
Local public schools	50	$ 706	$ 949	(H-8)

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TENNESSEE	Rank	State	U.S.	Table
Public welfare	25	$ 604	$ 691	(G-5)
Health and hospitals	13	$ 432	$ 386	(G-6)
Police protection	35	$ 156	$ 210	(G-7)
Fire protection	26	$ 94	$ 124	(G-8)
Highways	41	$ 250	$ 277	(G-9)
SCHOOL FINANCE EFFORT				
School revenue in 1994-95 Per $1,000 of personal income in 1995	50	$ 34	$ 45	(F-5)
School expenditures in 1994-95 Per $1,000 of personal income in 1995	44	$ 34	$ 40	(H-13)
SCHOOL FINANCES (CURRENT YEAR)				
School revenue in 1996-97				
Per pupil ADA	49	$ 5,132	$ 7,141	(F-4)
Percent of total from				
Local	31	40.8%	44.5%	(F-8)
State	25	50.8%	48.7%	(F-10)
Federal	12	8.7%	6.7%	(F-11)
Current expenditures in 1995-96 Per pupil ADA	40	$ 5,000	$ 6,133	(H-14)

a/ Data Source: NEA (1998). Rankings of the States, 1997. Washington D.C.: Author, 1998.

With limited revenues sources, limited expenditures result. In 1993-94 State of Tennessee's expenditures per capita ranked 45th among all states and D.C. at $3,326. Based on per $1,000 of personal income in 1994, Tennessee ranked 46th among the states. In terms of state and local expenditures by major function in 1993-94, expenditures for elementary and secondary education was the lowest amount spent by any state in the U.S., ranked 50th, at $706 per capita. Expenditures for school finance per $1,000 of personal income resulted in a ranking of 44th in comparison to all states and D.C.. The state also registered near the bottom at $5,000 in per pupil expenditures giving the state a ranking of 40th for expenditures per pupil in ADA.[18]

TENNESSEE SCHOOL DISTRICTS

The most recent data from the Tennessee Department of Education indicates that in 1997-98, Tennessee had 138 local school systems that contained 1,575 schools and employed 61,653 professional personnel with 890,805 students. Of the 95 counties in Tennessee, 30 counties contain either city districts or special school districts. Special

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School Districts are mostly rural districts that operate irrespectively of city boundaries and generally contain a small city. However, in all cases, special school districts and city school districts receive state aid from the Department of Education. Most of the counties (94 out of 95 counties) operate a county school district in addition to those counties that also contain city and special school districts. Gibson County is the only county that does not have its own school district, however, there are four special school districts and one city school district in Gibson County. Currently, there are 30 city school districts and 14 special school districts within the respective counties in the state. All of the county, city, and special school districts are fiscally dependent.[19]

In the 1997-98 school year, the student population in Tennessee's schools consisted of 74% Caucasian, 24% African American, and 2% Asian, Hispanic, and American Indian students. A total of 19% of all students in Tennessee received one or more special education services, 22% participated in Title I compensatory education programs, and about 41% received free or reduced-price school meals. The schools in Tennessee served 8,484 students with limited proficiency in English.[20]

The rate of students with limited English proficiency has increased 200% over the last five years according to the Tennessee Department of Education.[21] Though the largest language group identified is Spanish speaking, a large group of Kurds and Sudanese have settled in Middle Tennessee. The U.S. Census Bureau has identified Tennessee as the sixth fastest growing state in terms of Hispanic population. This increase is due in part to the number of immigrants who now work in the construction and agricultural industries. This dramatic increase over a relatively short time frame has significant and unexpected implications for the funding of Tennessee's schools. Though many of these Spanish-speaking students are bilingual, some students are not, which requires additional school funding to hire personnel to teach English as a Second Language.

HISTORICAL PERSPECTIVE OF SCHOOL FUNDING IN TENNESSEE

The development of educational funding in Tennessee began in 1835 when the Tennessee Constitution was amended to include language making the General Assembly responsible for the appropriation of funds. Article XI, Section 10 of the 1835 Tennessee Constitution required that funds be appropriated "to the support and encouragement of common schools throughout the state, and for the equal benefit of all the people thereof . . . for the support and encouragement of common schools."[22]

This strong commitment to common schools continued through Reconstruction after the Civil War. In 1873 the Tennessee legislature enacted the first comprehensive general education act called, "An Act to Establish and Maintain a Uniform System of Public Schools."[23] This was the first time in Tennessee legislation that the word uniform was used. According to Rutledge, the first public education fund established by the General Assembly in 1909 made an effort to achieve "some sense of equalization." Ten percent of the Tennessee Education Fund was set aside for school districts that had low taxable property wealth.[24]

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In 1925 the legislature enacted Chapter 115 of the Public Acts of 1925 creating the current system of public education.[25] The Tennessee General Assembly provided for minimal school programs for grades 1-8 funded on an equalization basis. In 1947, the Tennessee General Assembly created a minimum foundation program to fund grades 1-12 and introduced the first sales tax to fund education. A chronological list of Tennessee's school funding is shown in Table 3.

Table 3: Evolution of Tennessee's School Funding

Year:	Event:
1909	Tennessee General Assembly addressed the issue of "Equalization"
1925	Minimum Foundation Program (MFP) established
1947	Tennessee introduces first sales tax to fund education
1972	Tax Modernization and Reform Commission
1973	Comprehensive Funding Reform in Vocation/Te hnical Education
1977	Tennessee Education Finance Act: establishes Tennessee Foundation Program
1979	Tennessee School Finance Equity Study
1988	Tennessee Small Schools lawsuit filed
1991-1992	Educational Improvement Act-BEP created
1992	Half-cent sales tax: Dedicated Education Fund (4/1)
1992-1993	BEP implemented

Source: Green, H. (1995) Funding Tennessee Schools: From Reform to Restructuring.

In 1955, the General Assembly replaced assessed valuations and estimated valuations with economic factors (motor vehicle registrations, percent of farm products sold, percent of employed workers, and percent of state sales tax collections) in determining the relative taxpaying ability of each of the 95 counties. The requirement to provide special education services in 1972, and the mandate for comprehensive vocational and technical education in 1973, increased the requirements of the school board to provide equal education services.[26]

With changes to school funding the 1909, 1925, 1955, and 1972 the legislature established the Tax Modernization and Reform Commission to study the tax structure and make recommendations.[27] In its final report in 1974, the commission predicted the evolution of the funding crisis within the state if drastic changes were not enacted.[28] Among many of its recommendations, the commission suggested "that school funding

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be changed to a foundation program using a unit-cost approach for allocating funds to the Local Education Agencies." Two other recommendations by the Commission included increasing the amount of state support and equalizing local contributions. The first of these three innovations was incorporated into the Tennessee Foundation program enacted in 1977.[29]

THE TENNESSEE FOUNDATION PROGRAM

In 1977 the Tennessee Education Finance Act established the Tennessee Foundation Program (TFP), which was intended to provide equal funding for all districts. The Tennessee Foundation Program was established as a "pupil-based, program-oriented cost differential procedure for measuring needs and costs in state funding of K-12 public schools."[30]

Formula Operation. Under the Tennessee Foundation Program formula, the state allocated money to local school districts by summing funds for three groups of students: regular academic, vocational education, and identified students with special disabilities. The funding for each group was calculated by multiplying the full-time equivalent average daily attendance (FTEADA) for each program by its corresponding cost differential to obtain a weighted full-time equivalent average daily attendance (WFTEADA). To obtain the total Tennessee Foundation Program funds, the WFTEADA was multiplied by the base amount recommended by the State Board of Education as approved by the state legislature and the product was then multiplied by a training and experience factor that reimbursed districts for teachers who had advanced degrees or increased years of experience. The state aid program was conceptualized so that most of the funding for education was divided between the state and local governments. The state then provided 92.5% of the Tennessee Foundation Program funds and the local districts provided 7.5% of TFP funds.[31]

Revenue Generation. According to Hirth, the state tax structure was supported by income tax, sales tax, and property tax.[32] The income tax, however, was only placed on earnings from stocks and bonds held outside of the state. As a result the state relied heavily on sales tax. The sales tax rate was 5.5% with the localities determining the additional local option sales tax. At least half of the local sales tax option went toward education. Because local sales tax revenues went to the districts of origin without consideration of average daily attendance, inequities occurred as some districts were able to generate more revenue than other districts as a result of varied tax bases in the localities. Though the categories of assessment were uniform across the state, the administration of the systems also differed among counties.

Funding Disbursement. The state disbursement of both and sales and property taxes were based on the average daily attendance (ADA) of school districts within each county. County school districts were required to share funds with other districts in their boundaries. City school districts, on the other hand, were able to raise taxes with the local option sales without having to share the proceeds with other districts in the county.

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In addition Tennessee created 14 special school districts that disregarded city boundaries. These special districts, mostly in rural areas that contained a city, were fiscally independent, unlike the city and county districts. The result of the distribution system was that the city and special school districts were able to collect more revenue per pupil than the county districts, producing greater disparity.

Inequities. While the state provided 92.5% of the Tennessee Foundation Program (TFP) in 1991, the localities provided 7.5% of the TFP collectively. The determination of individual districts' required shares of the TFP was "the product of the local district taxing ability (expressed as a percentage) and the total state TFP."[33] Local taxing ability was determined by adjusting county property value by the adjusted state property value. Thus, the TFP made an attempt to equalize property values among districts. However, no attempt was made to equalize local option sales taxes which in 1989-90 resulted in more than 37% of local revenue for education. In fiscal year 1989-1990, 44.4% and 37.2 % of the local revenue came from property and sales taxes respectively. Although equalization of property values across counties was used to determine the district's share of the TFP, the rest of the local contribution was not equalized. Since only property values were used as a basis for determining the local share of the TFP, sales tax and other local revenue sources were not considered. In addition, as Hirth suggests, urban areas with large shopping malls were able to generate greater proportions of local option sales tax revenues than were rural areas. Since there were declining farmland values, rural school districts had to spend more on education from a position of economic weakness. Thus, much of the disparity was not equalized in the TFP and operated to disadvantage rural and small school districts.[34]

In addition to the inequities produced by the TFP, funding inequities were further produced by limited state categorical support for transportation, capital outlay, and other expenditures not included in the TFP. While the state provided most of its revenue through the Tennessee Foundation Program, about 73%; the state provided only about 27% of the total support for categorical aid. Expenditures not included in the TFP for which districts received categorical aid based on ADA included: capital outlay, transportation, textbooks, driver education, substitute teachers, and elementary guidance counselors. Based on Hirth's analysis, the greatest monetary problems for local districts were caused by expenses for transportation and capital outlay. In 1989-1990 the state provided $11,778,277 (15.8%) of the $74,365,537 in total expenditures for capital outlay, the rest was funded locally. Of state transportation funds, 40% were apportioned based on the geographical area of each county to the total state area in square miles. According to Hirth, only $8,359,641 (40% of $20,899,102) or 0.73% of all state support in 1989-1990 was based on sparsity. This apportionment based on sparsity declined over time from 1987-1990 from 84% to 73%.[35]

According to Meyers, in 1979 the *Tennessee School Finance Equity Study* found that the average 4th grade classroom, based on the 1977-1978 fiscal year, required $832 per pupil. Under the Tennessee Foundation Program (TFP) formula, the per pupil base amount was $342 dollars. In the last year that the TFP was used, 1991-1992, the base of

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$569.76 would have to have been increased by 46% to approach the $832 level required in 1977-1978 without including costs due to inflation.[36]

In 1991, the Tennessee legislature enacted budget cuts totaling $116 million to local school districts through the Tennessee Foundation Program in the school year 1991-1992. These cuts were a result of a stagnant economy.[37] In one county according to a superintendent interviewed, the reductions in aid required that his school district "had to cut services and lay off personnel and flex dollars just to maintain." These cuts provided additional impetus for small and rural school districts to forge ahead with the lawsuit.

TENNESSEE SMALL SCHOOL SYSTEMS V. MCWHERTER LITIGATION

In the summer of 1986, a group of superintendents were at a conference in Nashville, TN. As the superintendents discussed the problems that they were having in their respective school districts, they all realized that they were having the same problems, which were related to school funding. Though the purpose of this meeting was not to organize small and rural school district superintendents, the superintendents decided that they needed to work together in order to increase funding for their school districts.[38]

Initially the group brought its case to the legislature. As one superintendent interviewed said "we tried to convince them and we were learning at this stage. You must understand that we were a bunch of naive county superintendents and we thought we could go to the legislature and get the problem corrected." While many of the legislators empathized with the problems of the small and rural districts, they were unable or unwilling to take action. One of the superintendents was told by a legislator from a rural district "we've got the majority of people up there [rural districts], but we can never get the people together to get anything passed. Urban people stick together and the rural people won't."[39] Three superintendents representing the eastern, central, and western portions of the state formed the initial group of small and rural counties. This group expanded quickly however, and after only two years the membership grew to 75 members.

CHANCERY COURT CASE

Though the superintendents interviewed admitted that small and rural school districts had legitimate concerns, the legislature failed to act on behalf of the small and rural school districts. As a result, a group calling themselves the Tennessee Small School Systems (TSSS) filed a lawsuit against the State of Tennessee in July 1988, charging that because of inequities in funding the state failed to provide equal protection of the law to small rural school districts. The case of *Tennessee Small Schools Systems v. Ned Ray McWherter* ultimately pitted the small, rural, and less affluent school districts against both the state, and eventually, nine suburban and urban school districts in the state including Davidson, Shelby, Knox, and Hamilton counties.[40]

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Participant Description. The plaintiffs consisted of 77 out of 141 or 55% of the school districts in Tennessee. Of the total membership of TSSS, there were 61 county districts, five city districts, and 11 special school districts. Table 4 provides a list of all Plaintiff Districts that filed the original lawsuit in July 1988.

The school districts that were among the 77 were said to be characterized by one or more of the following characteristics: rural, small, and few total local revenues per pupil.[41] The plaintiffs included superintendents, board of education members, students, and parents of students from some of the districts. Governor Ned McWherter was cited as the primary defendant for the state. Charles O. Frazier, Director of Metropolitan Nashville, Davidson County public schools, was cited as the lead defendant representing the urban intervenors.

Defendants' Strategy. In an article written for the *Tennessee Law Review*, Kelly, attorney for the urban school systems, states that in preparing for litigation the intervenors were presented with a strategic and tactical dilemma. If the plaintiffs were successful in their lawsuit the legislature would possibly raise large amounts of additional funding to produce a more equitable funding system for all school districts. At the other extreme however, the legislature may resist raising taxes and simply redistribute funding, thereby producing the "Robin Hood Remedy".[42] The dilemma was resolved by exhorting the high costs endured by the urban school systems. Emphasizing the needs of urban school systems would be the best defense against the Robin Hood approach, according to Kelly. Also if the funding system was struck down the court and the legislature would be more inclined to develop a new funding system rather than redistribute funds.

In writing about the state's approach to litigation, Burson and Young indicated tactical maneuvers to narrow the issues before the Court. The Attorney General filed motions attempting to establish a standard review of the equal protection and education clauses.[43] The Attorney General had three primary goals. The first was to persuade the court to adopt a standard for assessing the constitutionality of statutes in order to avoid finance litigation in other states. The second was to ensure maximum legislative discretion and flexibility through the equal protection challenge. The third was to achieve a result in the education standard consistent with alleged original intent that provides no specific standard of education, allowing legislative and executive flexibility.[44]

Plaintiff Allegations. In their complaint, the plaintiffs alleged that education was a fundamental right under the education clause. They stated:

> that Article XI Section 12 of the Tennessee Constitution, which requires that the General Assembly maintain and support a system of free public schools, establishes a fundamental right to an adequate free education and that the defendants are depriving the students, on whose behalf the suit was filed, of this fundamental right".[45]

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Table 4: The Tennessee Small School Systems (TSSS)

List of Members		
Alamo City	Hawkins County	Obion County
Bedford County	Henderson County	Oneida County
Bells City	Henry County	Overton County
Benton County	Hickman County	Paris SSD
Bledsoe County	Hollow Rock-Bruceton	Pickett County
Bradford SSD	Houston County	Polk County
Cannon County	Humboldt County	Rhea County
Carter County	Humphreys County	Rogersville City
Cheatham County	Huntingdon SSD	Sequatchie County
Chester County	Jackson County	Smith County
Claiborne County	Jefferson County	South Carroll SSD
Clay County	Johnson County	Stewart County
Cocke County	Lake County	Sweetwater County
Crockett County	Lauderdale County	Tipton County
Cumberland County	Lawrence County	Trenton SSD
Decatur County	Lewis County	Trousdale County
Dekalb County	Lincoln County	Unicoi County
Dyer County	Macon County	Union County
Fayette County	Marion County	Van Buren County
Fentress County	Marshall County	Wayne County
Franklin County	McKensie County	Weakley County
Gibson SSD	McNairy County	West Carroll SSD
Giles County	Meigs County	White County
Grainger County	Milan SSD	
Grundy County	Monroe County	
Hancock County	Moore County	
Hardin County	Morgan County	

The plaintiffs further alleged in their complaint that the funding system violated the equal protection provisions of Article XI, Section 8 and Article I, Section 8 of the Tennessee Constitution resulting from inequalities in educational opportunities guaranteed by Article XI, Section 12. Based on this complaint the plaintiffs wanted a declaratory judgement that the funding statutes be found unconstitutional, that the defendants be enjoined from acting pursuant to those statutes, and that the state be required to develop an implement a funding system that meets constitutional standards.[46]

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Findings of Facts. Chancellor C. Allen High determined that the funding scheme produced great disparities among the various school districts. In 1986-1987, for example, the highest local per capita sales tax revenue was ten times that of the lowest. The average funds available per pupil by county in the 1986-1987 school year averaged $2,337 but varied among school districts from $1,823 to $3,669 in per pupil spending. In 1988-1989 per classroom spending varied from $110,727 in Kingsport to $49,167 in Lewis County. The great variation in available funds was a direct result of great reliance on local government to fund education. Because some school districts had more sales tax and higher property values including commercial property, these school districts had more funds for education.[47]

The variation in local effort was more a result of fiscal capacity rather than lack of effort. The actual revenues were compared for the districts in the state. Half of the districts had unused potential and half of the districts were above their potential in raising revenue. Out of the twenty districts with the lowest potential, fifteen had actual revenues greater than their potential, taxing at a rate higher than the statewide average. By contrast, of the twenty school districts with the highest potential for raising revenue, thirteen of the districts had actual revenues below their potential, taxing at a rate below the statewide average. The information demonstrated that "most school districts in the state--especially non-urban districts--cannot reasonably raise sufficient revenues from local sources to provide even the average amount of total funds spent for education per pupil statewide".[48]

The disparity in funding also resulted in disparity in the quality of education provided by the school districts. In the ten wealthiest districts in 1988-1989, 60% of the elementary schools and 77% of the secondary schools were accredited compared to 7% and 40% for the ten poorest school districts, respectively. In some of the poorest districts, none of the schools were accredited including Clay County, Wayne County, Hancock County, and Crockett County. In fact some of the poorest districts were not able to meet the state's minimum standards.[49]

Many schools in the poorer districts had decaying physical plants, inadequate heating, buckling floors and leaking roofs. The poorer schools also lacked proper equipment, supplies, textbooks, computers, and libraries to provide an appropriate learning environment. In Hancock County for example, one school library consisted of one bookcase in a storage room. Because of insufficient funds, the curriculum requirements were not being met. Schools lacked the ability to offer a variety of programs including advanced placement classes as well as art, music, drama, foreign language, and extracurricular activities. Plaintiffs' districts also failed in their efforts to retain teachers, fund needed administrators, and provide sufficient programs to students. In short, because school districts lacked the local available funds, students were not provided with the same educational opportunities as students in the urban and more affluent districts.[50]

Superintendents' Perspectives. For the small school superintendents bringing their case to court was a difficult task. According to one interviewee, "They [the metro school superintendents] would walk into court and they all had an attorney, and the State of

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Tennessee had an attorney. And here are the Tennessee Small School Systems, and we just had a few people, and there was an army sitting on the other side. So it was, what could you say, intimidating to look at all that over there against you."

All of the small school superintendents interviewed, who were also superintendents at the time of the original litigation, expressed that all they really wanted was their fair share of the revenue. One superintendent indicated that in his school district and other small rural areas across the state the economies were "drying up". With more people shopping and living in the bigger towns small and rural schools were losing resources. "We knew we were on a downhill skid with that. And with equal funding, our idea was we just wanted to share in the funds that were coming out of our counties anyway."

Another superintendent indicated that the biggest problem under the Tennessee Foundation Plan was the local option sales tax. Localities were able to raise the local option sales tax $0.075 to a total sales tax level of $0.825, but in his county there was a definite lack of retail sales. "If you don't have retail sales turnover, there are no dollars to generate". He said, "we did not say that we could guarantee a child an equal education, but we said that we could guarantee a child an equal education opportunity, but we had to have equitable funding to be able to guarantee them an equal educational opportunity."

For most of the superintendents the inability to raise adequate revenue locally was the fundamental reason for going to court. As one superintendent indicated "our county is what you might call a bedroom county. People live here but they work elsewhere and when they work elsewhere they tend to spend their money elsewhere. From all of the small rural counties around people go [to a large city] to spend their money. Obviously you can only raise your property taxes so much".

Several superintendents were also concerned about the loss of revenue across state borders. In one county residents crossed the border into Virginia to shop because the sales tax was much lower.

For example, Bristol, Tennessee borders Bristol, Virginia. Both counties operate separate school systems, but the Bristol, Tennessee system is a city system with an 8.75% sales tax while Virginia's sales tax [4.5%]is approximately half of that. As a result, people in Bristol, Tennessee shop in Bristol, Virginia providing revenue for the Virginia schools and not for the Tennessee schools.[51]

In other counties residents crossed the border to play the lottery in Virginia or Kentucky. "If you don't have sales in the community it doesn't matter what the amount of sales tax is, you can't generate the dollars."

But when the Tennessee Small School Systems brought their case to court the large school systems feared that revenue would be taken from them and given to the poor schools. However, poor school districts denied that was their aim according to one rural superintendent.

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> They kept throwing up this Robin Hood idea which we told them from the very beginning that we weren't going to do. But they have thrown that up as a political screen to oppose us and with their members in opposing us. They joined the state against us. We tried to get along with them, we still negotiate with them. But we never get anywhere.

Another superintendent said, "I'd have some superintendents call me Robin Hood and that type of thing and you know that was a concern, but we tried to approach it from the standpoint that we didn't want to take anything from anybody. We just wanted everybody to have more. And we wanted education to be better across the State of Tennessee." In retrospect, several superintendents that were interviewed believed that there was a general consensus even among superintendents from the larger, more affluent school systems that the school funding system was inequitable because small and rural school districts did not have the same access to education funds as the more affluent districts. To illustrate the point, the superintendent of Kingsport, an affluent city, testified on behalf of the Plaintiffs.[52]

The Chancery Court looked not only at the state funding plan, the Tennessee Foundation Program, but also looked at local effort in raising revenue. The plaintiffs argued that gross disparities existed because the small and rural school districts did not have the fiscal capacity to generate the necessary revenue needed to provide "even the average amount of total funds for education per pupil statewide". Furthermore, the plaintiffs contended that revenue sources generated by the larger affluent areas came from residents of the smaller, rural areas in the form of sales tax revenue.[53]

The defense countered citing examples of county legislative bodies that unwillingly raised local taxes to support schools. Grundy and Crockett school boards for example, were cited for inadequate local effort: these counties could have reached the state expenditure level if property owners would have paid $5.20 more each month on their property tax.[54] In terms of revenue generation the defense cited at least 7 sources of revenue from which local governments could draw; ad valorem property tax, local option sales tax, business, wheel tax, hotel-motel tax, and coal severance tax. The defense also downplayed spending inequities by illustrating the new and renovated schools in the small and rural districts. The defense also cited examples of decades old facilities in the urban, Memphis school system.

One rural superintendent was forced to testify on behalf of the defense because his district was able to raise additional revenue through community fund-raising and various grants. His testimony was intended to illustrate that small and rural schools could raise revenue if the effort was made. He indicated, however, that "We really took that and showed that you had to have resources before you could do anything regardless of where you got them."

Chancery Court Decision. Nevertheless Chancellor C. Allen High agreed with the superintendent's analysis, and on July 25, 1991, he ruled in favor of the plaintiff school

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districts and ordered the state legislature to reform the school finance system in the State of Tennessee. Table 5 provides a chronology of litigation in Tennessee. The Chancellor, C. Allen High, stated that rural school districts did not receive their fair share and stated that "the distinctive function of public education in our society coupled with the express guarantee in the Tennessee Constitution of free public education compels this court to treat it as a fundamental right."[55] The Chancellor noted that the great disparity in funding was due to the taxing and funding system because it benefitted schools near large retail centers or other areas where there was substantial property wealth.

Table 5: A Timetable of Events Involving the Tennessee Small School System's Lawsuit

Year	Month/Day	Event
1988	July 8	Small Schools Lawsuit: original complaint filed
1990	July	Chancery Court ruled K-12 education funding unconstitutional
1991	February 6	Education Improvement Act (EIA) introduced
1992	March	EIA passed
1992	April 1	Sales tax increase of half-cent effective (all revenue generated earmarked for education)
1992	July 1	EIA effective: Basic Education Program (BEP) begins, Education Trust Fund established, special revenue fund for BEP established
1993	March	Tennessee Supreme Court held that pre-BEP education funding was unconstitutional
1994	April	HJR 191: A Report to the General Assembly: Accountability for Funding Education in Tennessee
1995	February	Tennessee Supreme Court ruled that teachers' salaries equalization must occur according to the BEP formula

Source: Green, H. (1995). Funding Tennessee Schools: From Reform to Restructuring

Appeal of Chancery Court decision. In September of 1991, the Chancery Court issued an order for the legislature to meet its constitutional obligation by reforming the school finance system with a deadline established for June of 1992.[56] In November of 1991 an appeal was filed on behalf of the defendants in the Tennessee Court of Appeals. In the appeal the judgment of the Chancery Court was reversed, dismissed, and remanded. In

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writing the opinion Judge Henry F. Todd stated that "The evidence in this case does not show that the application of said statutes to the situation of the plaintiffs as a group, or to any individual plaintiff or group of plaintiffs results in deprivation of any constitutional right." Additionally the Judge wrote that the Tennessee General Assembly had "broad discretion in defining the extent of right and providing for the means of satisfying that right", and that "the pleadings and proof in the case do not present an issue as to a right to an education, but as to the duty to provide funds to finance education." [57]

In his dissenting opinion Judge Samuel Lewis stated, "The record clearly shows that students in poor districts are being deprived of their fundamental right of access to a free public education which meets the minimum standards applied statewide."[58] According to Judge Lewis judgement of the Chancery Court should have been affirmed on both the education clause and the equal protection provisions of the state constitution.

TENNESSEE SUPREME COURT

In 1993 the Tennessee Small School Systems appealed the Appellant Court decision to the Tennessee Supreme Court. A key component supporting the defendants was the recently enacted Education Improvement Act (EIA) approved in 1992. The centerpiece of the EIA was the Basic Education Program (BEP), the funding program currently in use in the State of Tennessee. The defense cited major innovations in the newly devised and implemented Basic Education Program. One major innovation was a greater equalization of funding distribution to the localities. Under the BEP, the state calculated fiscal capacity based on sales tax, property tax, and income tax, instead of just property tax, benefitting districts with little sales income or property wealth. The defendants also argued that the new plan provided more than a dozen categorical grants and would factor in differences in competitive salaries earned by teachers. The plaintiffs argued, however, that the BEP was outside of the record since the BEP had been proposed but not enacted or funded at the time of the original case.[59]

Education Clause Challenge. The plaintiffs asserted that the statutory funding scheme violated provisions of Article IX, Section 12 of the Tennessee Constitution. Section 12 of the Tennessee Constitution says that "the State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support, and eligibility standards of a system of free public schools". The defendants countered by denying that Article XI, Section 12 "guarantees substantially the same education". The defendants insisted that the Tennessee Constitution only authorizes an educational delivery system.[60] Though the defendants recognized the inequities in the system, they maintained that the present system satisfied the mandates set forth in the constitution, and they suggested that there were no qualitative standards for assessing the quality of education.

The Court concluded then that Article XI, Section 12 of the Tennessee Constitution "guarantees to the school children of this state the right to a free public education". The Court however, did not provide the precise level of education that Article XI, Section 12

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required. Instead, the Court decided the plaintiffs were entitled to relief under the equal protection provisions of the State Constitution.

Equal Protection challenge. Under the equal protection clause challenge, the plaintiffs contended that they were entitled to relief under the equal protection provisions of the Tennessee Constitution and the Fourteenth Amendment of the U.S. Constitution. The two provisions of the Tennessee Constitution Article I, Section 8 and Article XI, Section 8 taken together, guarantee equal privileges and immunities for those who are similarly situated.[61]

The defense did not contend that there were not disparities in the educational opportunities afforded to students. The defense, however, presented the argument that a growing body of evidence disputed the existence of a direct relationship between expenditures and students performance. Furthermore the defense argued that the benefits of local control justified the inequities in educational opportunities. In order to maintain local control of the school system, the defendants maintained, it was essential for the localities to maintain fiscal control of the school districts.
The Court agreed that county and school district officials had managerial control over resources, however, the Court disagreed with the notion that control of revenue raising enabled localities to control the quality of education provided,

> If a county has relatively low total assessed value of property and very little business activity, that county has, in effect, a stone wall beyond which it cannot go in attempting to fund its educational system regardless of needs. In those cases, local control is truly a "cruel illusion" for those officials and citizens who are concerned about the education of the county's school children.[62]

The Justices concluded that local control was not a justification for disparity in opportunity because they determined that altering the state funding scheme would not reduce the degree of local control for individual school districts. The court found that, "The essential issues in this case are quality and equality of education," not the equality of funding as presented by the defendants and intervenors.[63] The Court concluded that the remedy for addressing the funding scheme should come from the legislature and not the Court. As a result, the Supreme Court upheld the findings of the Chancery Court and the case was remanded to the Chancery Court.

In his commentary on the case in *West's Education Law Reporter*, Thro, an Assistant Attorney General of Colorado, suggested that the Court seized the phrase *inherent value* of education and determined that the education mandated a particular quality of education. The Court, however, avoided defining that quality standard. With respect to the Equal Protection Clause, the Court first determined that the Tennessee Equal Protection Clause and the Federal Equal Protection Clause offered essentially the same protections. The Court then applied the rational basis results regarding local control. Thro notes that with the exception of the Arkansas decision in 1983, every other school finance case using the rational basis test through 1993 resulted in upholding the finance

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system. In most of these cases, Thro suggests, the rational basis assertion was based on the need or desire for local control of the schools. The Court cited the Arkansas decision and declared that the Tennessee school finance system was irrational and that local control could not justify the disparities in education. Finally, the Court concluded that the state could require local governments to spend for education without exercising greater control over the local districts.[64]

The Tennessee decision found the school finance system unconstitutional based on the "plain meaning" of the education article. State officials recognized the inadequacy and disparity in the funding system and the Court pronounced the substantive duty of the General Assembly to "maintain and support a system of free public schools".[65]

Thus, the Court held that the Tennessee Constitution guaranteed to the school children of the state the right to a free public education, and found that the General Assembly was obligated to maintain and support a system of free public education that was substantially equal to all students. The Court also found that the disparities were caused principally by the statutory funding scheme, violating the guarantee of equal protection.

SECOND TENNESSEE STATE SUPREME COURT RULING

Despite having the finance system found unconstitutional by the Tennessee Supreme Court, the Tennessee Small Schools Systems, unsatisfied with the judgement, filed an appeal in the Supreme Court of Tennessee in February of 1995. The TSSS contended that the new funding scheme, the Basic Education Program, violated equal protection rights because the changes being implemented in the funding scheme would be accomplished over a period of years and not immediately. Further, the plan did not contain provisions to account for the equalization of teachers' salaries. Finally, TSSS wanted a priority placed on capital improvement.

The defense argued that teachers' salaries did not have an impact on the quality of education students receive. The Court disagreed since the goal was equalization of funding, and since teachers' salaries make up the greatest percentage of school expenditures. The Court found that "the exclusion of teachers' salary increases from the equalization formula is of such magnitude that it would substantially impair the objectives of the plan".[66] The Court stated that equalization of teachers' salaries must be a part of the BEP formula.

In terms of mandating immediate remedies to equalize funding, the defense posited the argument that the individual districts would not have sufficient opportunity to create a plan for spending all of the funds at one time, and they suggested that the school districts needed time to develop an implementation scheme for the additional revenue. The Court agreed and found that substantial improvements in the educational opportunities under the BEP would best be accomplished incrementally. The Court also did not support the contention that capital improvements were a priority over other spending. Thus, the BEP was modified only to support the equalization of teachers' salaries. The Court concluded

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that the BEP addressed both constitutional mandates imposed by the state: the obligation to maintain and support a system of free public schools, and the obligation that the system afforded substantially equal educational opportunities for all students.

LEGISLATIVE AND STATE ACTION

While the Tennessee Small Schools System lawsuit was still pending in Chancery Court, and well before the final State Supreme Court decision, legislative leaders had been working on a remedy to the state funding system. The legislators' work was based on an ad-hoc committee of state wide education officials formed by the Tennessee State Board of Education. This committee, which previously reported to the State Board of Education in 1991, developed recommendations for an improved system of funding public schools. The system, called the Basic Education Program (BEP), would fund the local school districts by establishing a basic educational cost and determining the local share of the cost by analyzing the localities' fiscal capacity. According to the Assistant Commissioner of Tennessee's Department of Education, the additional funds necessary for implementation of this new plan would be $665 million, to be phased in over a six-year period.[67]

According to a GAO report, Tennessee was facing significant budget pressures as a result of medicaid expenditures and prison construction programs.[68] Additionally, the need to equalize the state education funding program was being impacted by the increasing costs of a growing student population, which included an increasing number of special education students. In their attempt to develop specific legislation to fund the Basic Education Program, legislators had to determine how to raise the additional $665 million needed, and how to equitably distribute those funds among the districts.

RAISING TAXES

In February of 1991, Governor Ned McWherter advocated that the legislature establish a 4% state income tax to pay for a four-year, $590 million education reform plan.[69] As an incentive Governor McWherter proposed a cut in the state sales tax, which ranged from 6-8% depending upon the local option sales tax employed by the various localities. Food and residential utilities would have also been exempted from the sales tax under the Governor's plan. The plan was designed to raise the state's share of the foundation program from 50% to 70% increasing school budgets by more than 50% in 55 of the state's 139 school districts. Critics of the plan argued that the money would not be well spent. The executive director of the Tennessee Business Roundtable stated, "It's success hinges on the education plan being perceived as providing the accountability people are demanding."[70]

In 1983-1985 the General Assembly created the Special Joint Legislative Task Force on Local and State Structure. The purpose of the task force was to study Tennessee's

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revenue system and to make recommendations for improvement. After its study of Tennessee's tax structure and a comparison with the tax structures of other states, the Task Force concluded that "Tennessee's tax system was not equitable, simple or adequate."[71] In its final recommendations, the Task Force specified three proposals that included the following elements: lowering the sales tax to improve equity and reduce border tax leakage; alter the sales tax base; impose a state personal income tax; and radically restructure and simplify the business tax.[72] The legislature, however, did not adopt the proposals.

Similarly, Governor McWherter's tax proposal was rejected by the legislature and instead a an increase to the sales tax was proposed. Even in attempting to increase the sales tax, legislators in favor of the new program encountered opposition from several groups. Several legislators, some private education groups, and members of the business community believed that increased funding was not needed. They cited research indicating little or no relationship between spending and student achievement and insisted that a sales tax increase would not necessarily guarantee an improvement in education.[73]

Sales Tax and Accountability. Some legislators and state education officials insisted that the inclusion of accountability provisions and a half-cent sales tax were necessary in order to pass the Basic Education Program. According to these key officials, a half-cent sales tax increase would not be viable unless the legislature could ensure that increased revenues would not be spent on increases in teacher salaries. Many legislators believed that increased teacher salaries did not enhance learning outcomes. In terms of accountability provisions, many legislators believed school district performance should be the responsibility of local school officials. As a result it was necessary to make provisions to empower the Commissioner of Education to remove school board members or superintendents in districts that failed to meet performance standards by school year 1994-1995. Elected school board members would also appoint district superintendents, a process which previously was left up to the voters in the local school districts.[74]

THE EDUCATION IMPROVEMENT ACT

On March 11, 1992 Governor McWherter signed the Education Improvement Act which became effective on July 1, 1992. This act created the Basic Education Program (BEP), the Education Trust Fund, and the BEP account. Public charter 529 was signed into law in March of 1992 to increase revenue specifically for education. Though this was intended as a temporary increase, the sales tax was made permanent in April 1993. In order to track the expenditure of revenues for education, an Education Trust Fund was established. Previously, revenues earmarked for education were placed into a general fund with no accountability mechanism to ensure they would not be shifted to other areas of government. Under the EIA, funds placed in the Education Trust Fund could not be removed and put back into the state general fund. In addition there were a number of accountability measures for tracking the funds.[75]

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The accountability for tracking funding provided through the tax increase was in response to legislative requests. House Joint Resolution No.191, stated that "Allegations have been made that past tax increases that passed in the name of education improvement have not been expended for that purpose ".[76] The Resolution specified that state and local funds appropriated for education would go into dedicated funds to be used only for education and that revenues from the half cent increase in the state sales tax in 1992 would be similarly dedicated. According to the Tennessee Department of Revenue, in FY 1996, revenue from the half-cent state sales tax collection resulted in revenue of $302,127,394. The House Joint Resolution as well as the other accountability measures placed into effect, emphasized the concern of legislators relating to tax increases and accountability.[77]

THE BASIC EDUCATION PROGRAM

The hallmark of the Education Improvement Act was the establishment of a new funding system designed to create greater equalization among school districts; this funding plan is called the Basic Education Program (BEP). The BEP utilizes a two-part mechanism for calculating funding for education: a classroom component and a non classroom component. The classroom and non-classroom BEP formula are shown in Appendix A. The classroom component formula utilizes staffing ratios to establish costs of local staffing and is funded primarily by the state (75%) with the remaining (25%) funded by the districts. The non classroom component, which includes central office expenditures, transportation, operations, maintenance, and capital outlays, is funded equally by the state (50%) and by the local education agencies (50%).

Under the old TFP, pupil transportation, capital outlay, and many other categories of expenditures were excluded and funded through categorical grants by the state or funded almost exclusively by the localities. The BEP formula is composed of 42 components which are estimated primarily on the basis of average daily membership for the prior year. The 42 components include basic, vocational, and special education; guidance counseling; textbooks; art, music, and physical education; library services, social workers, and psychologists; computer technology; supervisory and administrative staff, transportation; and capital outlays. Once each of these costs is calculated and summed, the resulting total cost estimate for the 42 components is the figure utilized to provide funding for the individual school districts. These costs are estimated and adjusted for inflation each year.

The actual costs for each of the components in the BEP are determined by a variety of methods. For example, the superintendents' salary was initially determined based on a southeastern survey of school superintendent salaries in 1992. Each year the salary is increased and adjusted for inflation. Other salaries are determined by computing a statewide instructional salary average plus retirement benefits and cost of living increases. The instructional salary is used for all instructional personnel including technology coordinators. Salaries for non instructional personnel are computed using the Educational Research Service Agency Southeast Average. This includes salaries for

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school secretaries, librarians, and instructional assistants. The costs for capital outlay are calculated using the mean square foot cost report.[78] Each component of the BEP is recalculated each year using a three-year sliding average. For example, costs for the 1999-2000 school year are calculated using the average of the three previous years.

Fiscal capacity formula. To determine the local education agencies share of the 25% classroom and the 50% non-classroom components of the BEP, a fiscal capacity formula is used. Fiscal capacity "is commonly defined as the potential ability of local governments, or school systems in this case, to raise revenues from their own taxable sources relative to the cost of their service responsibilities".[79] The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) was charged with the task of developing a fiscal capacity formula that would equitably determine the potential of school districts to pay their fair share of the BEP. This formula was composed of measures of fiscal capacity based on comprehensiveness, potential fiscal resources, service responsibility, and tax exporting.[80] The comprehensiveness component of fiscal capacity includes all measures of fiscal capacity of school systems to finance its services. Potential fiscal resources includes all potential fiscal resources not simply those actually used. Service responsibility incorporates the responsibilities of jurisdictions to provide necessary services. Tax exporting takes into account taxes paid by residents in jurisdictions other than where they reside. The TACIR model includes all of these principles.

Unlike many states that use only one or two measures, typically the local property tax, of a localities ability to pay, the Tennessee fiscal capacity formula utilizes 6 variables in a multiple regression analysis formula to determine local capacity to pay. TACIR developed a formula based on the following factors: per pupil revenue, per pupil equalized property assessment, per pupil taxable sales, per capita income, ADM to population ratio (service burden), and residential/farm assessment (tax burden). Using multiple regression these five variables are regressed on the dependent variable of per pupil revenue. The ultimate purpose of utilizing these variables was to achieve not only taxpayer equity but also pupil equity in terms of generating revenue. Table 6 shows the method used for calculating fiscal capacity. The fiscal capacity model uses a three year moving average of the six variables in order to reduce error. The fiscal capacity formula ultimately provides the equalizing component to the Basic Education Program.[81]

Cost Differential Factor. Tennessee uses a state derived cost differential factor (CDF) in order to adjust for the costs of education among counties that have higher than average wages in order to account for relatively greater costs. The CDF is an adjustment to the BEP that recognizes the varying costs of operating school systems based on location. "The CDF measures the ratio between non-government wages and state wide non-government wages using data collected by the Tennessee Department of Employment Security".[82] The CDF is used to adjust both the classroom and the non-classroom components of the BEP. Finally, the costs are equalized using the 25% classroom and 50% non classroom ratios for which the local education agencies are collectively responsible.[83]

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Table 6: Fiscal Capacity for Education Factors and Measurements

Factors	Measurements
Local Revenue	Per pupil own-source revenue
Tax Base (pupil equity)	Per pupil sales Per pupil property
Ability to Pay (taxpayer equity)	Per capita income
Resident Tax Burden (taxpayer equity)	Ratio of residential and farm assessment to total assessment
Service Responsibility (pupil equity)	Ratio of average daily membership to population
Methodology	Ordinary least squares Multiple regression analysis

Source: Green, H., Holliday, L. (1997) *Fiscal Capacity for Funding K-12 Education: Fiscal Year 1997-1998*. Tennessee Advisory Commission on Intergovernmental Relations. Nashville, TN.

BEP Calculations. Once student counts, total component costs, fiscal capacity, and the cost differential factor are calculated, the BEP formula for classroom and non-classroom components are calculated for state and local funding requirements. The first step in calculating the BEP is to differentiate between the two major divisions in the formula. The state and local funding splits for the two major divisions of the formula vary from county to county based on each county's fiscal capacity index. The total BEP cost for each district within a county is calculated and added to develop a total county BEP cost. Each district's share of the total county BEP cost is multiplied by the county share of the total state BEP cost. The resulting figure is the district share of BEP cost. The total state share of the district's BEP cost is the difference of the total district cost minus the district's share. The final step in the BEP model is to apply the funding splits to the classroom and non-classroom components in each system. This determines the full funding in state dollars and the minimum amount that localities must pay. Table 7 illustrates the computations involved in calculating the BEP.

BEP--Teacher Salary Adjustment. As it was amended to reflect the judgement of the 1995 Supreme Court decision, the BEP also contains provisions for the equalization of teacher salaries. A target compensation package, including average instructional salary and employer paid health insurance premiums, was less than the target compensation package of $28,094. The goal was to increase average teacher pay by the difference between them. The $28,094 was determined by calculating the average compensation

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Table 7: Calculating the BEP Formula

A. Student Counts and Total Component Costs

Student Counts x Position Ratios = Number of Positions

Number of Positions x Salaries
PLUS
Salaries x Benefit Factors
PLUS
Student Counts x Unit Costs of Non-position Components
EQUALS
Total Component Costs

B. Cost Differential Factor (CDF) Adjustments and Grand Total BEP Cost

Total Component Costs
x
Non-government Wage Ratio
EQUALS
Cost Differential Factor Adjustment

Total Component Costs
PLUS
Cost Differential Factor Adjustment
EQUALS
Grand Total BEP Cost
Equalization of State Funding

C. State and Local Funding Splits and Statewide Local Funding Requirements

Grand Total BEP Classroom Cost (all systems)
x
25% Local Funding Split
EQUALS
Statewide BEP Classroom Local Funding Requirement

Grand Total BEP Non-classroom Cost (all systems)
x
50% Local Funding Split
EQUALS
Statewide BEP Non-classroom Local Funding Requirement

D. Local Funding Capacity and Funding Splits

Statewide BEP Classroom Local Funding Requirement
x
County Share of Statewide Local Funding Capacity
EQUALS
County Total BEP Classroom Local Funding Requirement

County Total BEP Classroom Local Funding Requirement
DIVIDED BY
County Total BEP Classroom Cost (all systems)
EQUALS
County BEP Classroom Local Funding Split

Statewide BEP Non-Classroom Local Funding Requirement
x
County Share of Statewide Local Funding Capacity
EQUALS
County Total BEP Non-Classroom Local Funding Requirement

County Total BEP Non-classroom Local Funding Requirement
DIVIDED BY
County Total BEP Non-classroom Cost (all systems)
EQUALS
County BEP Non-classroom Local Funding Split

E. Individual Systems' State and Local Funding Requirements

County BEP Classroom Local Funding Split
x
System Total BEP Classroom Cost
EQUALS
Minimum Local Classroom Funding Requirement

System Total BEP Classroom Cost
MINUS
Minimum Local Classroom Funding Requirement
EQUALS
System Full State Classroom Funding

Source: Roehrich-Patrick, L. Lynnisse (1999). "How Tennessee is Using a Basic Education Program to Improve Equity and Adequacy" Tennessee Department of Education. Paper presented at Nashville Finance Conference.

package for each school system using a December 1, 1993 average instructional salary. This was determined by subtracting the top and bottom 5% of systems and averaging the salaries of the remaining school districts. For the remaining school systems the $28,094 was established as a target salary. If school systems did not meet the salary average those school systems received salary equity funds. School systems were also required to indicate how they were going to use the salary equity funds, either through insurance or through pay raises. School systems had the option of determining how to increase the average to that number. Hypothetically, school systems could provide the additional funding to their highest paid teachers. It was the school systems option.[84] According to a Department of Education official, in 1995-1996 the state distributed approximately $7 million in salary equity funds. In the school years beginning in 1996 and 1997, the state

provided full funding to the plan and distributed approximately $12 million in each of those two years.

BEP Phase-In. The BEP, which had a base year of funding in 1990-1991, has been implemented incrementally over a six-year period from 1992-1998. During those six years, the BEP funding formula was calculated for each local education agency to determine the allocations if the BEP were fully funded. The funding levels were calculated using the old Tennessee Foundation Program base amount plus the additional categorical programs and cumulative salary improvements that were in place prior to the implementation of the BEP. Once the base and categorical amounts were calculated under the old Tennessee Foundation Plan, then this calculation was subtracted from the projected funding allocation if the BEP if it were fully funded. The difference in the two amounts was determined for all of the districts statewide. Then the appropriations under the new BEP formula was distributed proportionally to each of the school districts each year, with the school districts furthest from the BEP full funding level receiving the greater percentage.

Based on the accountability report provided by TACIR to the General Assembly in 1998, the average percent of full funding for the ten school systems closest to BEP full funding rose from 89.2% in FY 1993 to 97.0% in FY 1996, an increase of 7.8 %. For the ten systems farthest away from BEP full funding levels in FY 1993 the average was 65.1% compared to 89.8% in FY 1996, an increase of 24.7%. Though the ten systems farthest away from full funding were still below the ten systems closest to full funding, the proportion of difference decreased over the three-year period.[85]

According to the Commissioner of Education for the State of Tennessee, the BEP was fully implemented in 1997-1998. From fiscal year 1993 through fiscal year 1997, BEP funds were incrementally added to the existing Tennessee Foundation Program and its categorical grants. Through this incremental funding each year to full funding from school years 1992-93 to 1997-98 the total cost of phasing in the BEP formula was approximately $695 million.[86]

Accountability. In addition there is a system of checks and balances to ensure accountability. The Division of Accounts and the Department of Finance and Administration maintains the BEP revenue account and the Education Trust Fund. The Department of Education, however, authorizes the disbursement of funds to the local education agencies who in turn submit accountability reports to the Department of Education. The Department of Education publishes an annual Report Card and both the Department of Education and the State Board of Education report to various legislative bodies including the General Assembly.[87]

To make revisions to the BEP, the EIA requires a specially appointed board comprised of superintendents and other officials to look at the formula each year. Once the board reviews the BEP the State Board of Education reviews the recommendations. From that point, the Commissioner of Education and then the Finance Administration review the recommendations. Finally the appointed board proposes its recommendations to the

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legislature when it comes into session.[88] The legislature may approve or reject the proposals submitted by the appointed board, however the legislature by law may not make amendments or revisions to the proposed recommendations.[89]

Another component of accountability in the BEP is through educational performance. *The 21st Century Schools Program Report Card* provides comparative data on finances and performance for every school in the state. The Report Card provides information including attendance, promotion, drop-out rates, achievement scores, and value-added scores. The Report Card also contains information relating to finance expenditures and revenues for districts, the state, and the federal government.[90] A unique component of accountability is the value-added assessment, a concept borrowed from economics. The value-added assessment measures academic gains in grades 3-8 and expresses the results on a school by school basis in comparison to national averages.[91]

IMPACT OF THE EDUCATION IMPROVEMENT ACT

There are several benefits to the new formula. First, it is comprehensive including all previous categorical grants with the exception of Career Ladder and Extended Contract programs, which are supplemental funding programs for teachers, and Connect 10 funding used for technology innovation . Second, the formula provides great latitude for school systems in how they spend their money. Because the formula is based on average daily membership rather than average daily attendance, all school systems receive greater funding than under the TFP. The greatest advantage according to the Commissioner is that the formula provides equalization, *including teachers' benefits*, based on varying sources of revenue, *not just property taxes.*[92]

In a 1997 publication by the Tennessee Advisory Commission on Intergovernmental Relations, called *Education Finance Reform in Tennessee*, the report includes horizontal equity measures that illustrate improvement from 1992, the year the BEP was enacted, to 1996. From 1992 to 1996, the range decreased, however, by 22.8%.[93] The Federal Range Ratio, which measures the range of school districts with the top and bottom 5th percentile eliminated from the measure, was .68 in 1992 and decreased to .50 in 1996, an improvement of 26.5%.

TACIR included other equity measures in its report. Although local spending did increase in the wealthiest school system (Oakridge City Schools), the "total range ratio" narrowed from 127.3% in 1992 to 98.1% in 1996. This means that per pupil spending by the highest spending school system was 98% greater than the lowest spending district in 1996. Another index used by TACIR measuring two school systems made famous by a CNN special report, Kingsport City School System and Hancock County School System, showed that the disparity between the two systems declined from 53% to 21% from 1992-1995.[94]

It is important to note that the equity measures calculated by TACIR are based on county level numbers and not district level numbers. The same holds true for the calculation of

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the fiscal capacity index. One reason for this according to one employee with the Division of Property Assessment is that the availability of data at the district level is not reliable.[95] Some city and special school districts fall within the boundaries of more than one county. For example, the city of Oak Ridge pays property taxes to both Anderson and Roane Counties. To complicate matters, other taxing municipalities that do not operate school districts also do not fall within one county boundary. The amount of revenue these municipalities, cities, and special school districts pay to each county is determined at the most local levels. Therefore, it is difficult for the state to identify revenue percentages paid by the various municipalities to the counties that in which they are located.

As a result it is difficult for TACIR to calculate fiscal capacity at the school district level because data collection is difficult and the actual numbers are not consistent on a yearly basis.[96] Individuals interviewed at TACIR and the Division of Property Assessment indicated that TACIR is currently trying to develop a fiscal capacity model at the school district level. In the meantime, however, measures of equity by TACIR is currently based on county figures. There may, however, be large differences in the fiscal capacity levels of individual school districts that currently is not assessed. As a result, the equity measures used by TACIR, though promising, should be approached with caution.

In terms of funding to small, rural districts the impact of new funding has been significant according to a GAO report, *Three State's Experiences with Equity in School Funding*. A former legislator interviewed for this report stated that "an estimated 70-80 small, rural districts can now provide educational opportunities to their students that they could not offer before."[97] This legislator provided as an example that schools for the first time had art and music teachers and were able to provide more course offerings to college bound students. Some other improvements cited included greater local flexibility in spending decisions at the local level. Another improvement included cost based financing enabling school districts to receive increased funding based on enrollment or cost, which previously was a problem for items like transportation that was updated only periodically, but now, under the BEP, is recalculated every year.

Prior to the outcome of the state Supreme Court decision, Hirth conducted a study of Tennessee school superintendents to obtain their views on the current litigation among other things. Based on the response of 82 of the 140 superintendents, well over 95% indicated that they clearly favored the new BEP funding formula, anticipating that it would boost their per pupil expenditure. When asked how they perceived the current litigation, approximately 90% indicated that they believed the lawsuit was necessary to correct school funding inequities, and a similar number indicated approval of the initial Chancery Court ruling.[98]

Likewise, of the six superintendents interviewed, every one of the small or rural school superintendents praised the BEP for a variety of reasons. The most frequently cited attribute of the funding program was the additional revenue provided for the small and rural schools. The superintendents interviewed indicated that they used the additional revenue for numerous purposes. One superintendent indicated, "We have been able to

add staff, build classrooms, add a lot of technology. And we've done many things we hadn't been able to do prior to that." Another superintendent commented, "Well, our county doesn't have a very large tax base. Practically no sales tax, that type of thing, and so its enabled us to reduce pupil teacher ratios." Another superintendent simply stated that "the last 5 or 6 years have been the best years for education ever in the State of Tennessee."

In terms of explaining what the BEP has done for his school district, one rural superintendent, who was also a superintendent at the time of the litigation, summarized the feelings of the other superintendents:

> Well, it's been something that, I don't know if I can put it into words, what a positive effect it's had: From putting standards into place, from teacher to pupil ratios, from consumable materials, text books, everything from facilities on down. The BEP program that was funded has just been a great thing in terms of, especially in terms of equalizing the dollars that have been spent per pupil across the State of Tennessee. We've probably had something in the neighborhood of a thirty-five to forty percent increase from the Tennessee Foundation Program dollars to the Basic Education Program dollars. You know that's rather significant.

Most of the superintendents indicated the ability to reduce pupil teacher ratios as a result, but this was part of the intent of the BEP. By 2002, four years after implementation of the BEP, all school districts will have been expected to reduce their class sizes. Class sizes in grades K-3 will average 20 students with a maximum of 25 per class. In grades 4-6, class sizes will average 25 students per class with a maximum of 30 students per class. In grades 7-12 class sizes will average 30 students per class with a maximum of 35 students per class.[99] Though most of the superintendents interviewed indicated that their districts were well on their way to meeting the class size target, they admitted other school districts were not as far along in the process.

The Tennessee Advisory Commission on Intergovernmental Relations has monitored the accountability components of the EIA, and TACIR reports annually to the legislature. In 1998, TACIR reported that since the enactment of the BEP in FY 1992 through FY 1996, a total of 5,818 new teacher positions had been created utilizing BEP funds. Of that total most of the teachers (4,027) were hired to reduce class sizes in grades K-8. The next largest majority of teachers hired in those years (728) were high school teachers. New teaching positions also included art, music, physical education teachers (365), vocational education teachers (110), and special education teachers (558).[100] Not surprisingly, the rural and small school district superintendents interviewed believed that the increases in BEP funds contributed significantly to the creation of new teaching positions.

Technology was another major addition resulting from the increased funding according to the superintendents interviewed. In one school, computer ratios were as high as five computers per classroom in certain subject areas. The ability to network school district computers and labs is a major push of the Tennessee Department of Education, and the

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superintendents are grateful. On commented that despite the small size of his school, his teachers were able to provide workshops for teacher from other school systems on how to incorporate technology into the curriculum. In FY 1996, based on the TACIR accountability report, a total of $3,637,500 was spent of state-of-the-art technology and training which resulted in funding to equip every school library and central office with a connection to the Internet. upgrade technology in the schools.[101]

Still another major component of the BEP cited as a real plus from the previous TFP is the ability to use money according to individual needs. While one school system may need updated textbooks--a frequently cited problem during the Small Schools litigation--other school districts may need modernized facilities. The only restriction placed on funding from the BEP is that money earmarked for the classroom component must be used for that specific purpose, classroom components, but the specific area of classroom use is left entirely up to the school district. The six superintendents interviewed cited numerous other additions resulting from increased funding, but primarily in the areas of class size reductions and increased technology. It is not surprising that the Department of Education's vision appears to coincide with areas in which superintendents are able to articulate the benefits of increased funding.

FUTURE CHALLENGES AND LITIGATION

One school finance expert in Tennessee believes that the lawsuit drove more funds to small and rural school districts. In his opinion, however;

> The additional funding provided by the BEP has merely maintained the status quo for all systems. Tennessee is still in the lowest quartile in terms of per pupil expenditures in comparison to other states. The BEP brought about a greater state of equalization, but not adequacy.

According to *Rankings of the States* published by the National Education Association, in 1997 Tennessee was ranked number 40 in per pupil expenditures (in average daily attendance) among all U.S. States and the District of Columbia. Worse, the state was ranked *49th in public school revenue per pupil* in ADA in 1995-96.[102] The finance expert interviewed indicated that despite their glowing comments, "Sometimes the sight of this [lack of adequacy] is lost in rural districts where the situation is much better than prior to the lawsuit and BEP enactment."

One superintendent, in discussing the school district's $90,000 annual budget for textbooks, indicated that the school district was accustomed to operating on a tight budget. This superintendent questioned, where do you draw the line, and what items do you purchase and what do you forgo. "Being a system like we are, and being accustomed to the dollars that we budget, we feel we're operable at this point."

The term operable stands out as superintendents discussed the things that they would like to have including more money for facilities, money to address the rapid growth in certain

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rural areas, and more money for programs like English as a Second Language for those persons moving to Tennessee from other areas. One Superintendent interviewed indicated that the Hispanic population increased from 0%-20% within five years. He attributes the increased Hispanic population to job opportunities in Tennessee. But this increase of students requiring ESL courses places more demand on personnel and ultimately funding. Overall, three out of the six superintendents interviewed indicated an unwillingness to ask for too much. As one superintendent explained, "Of course this is like the king being selfish and wanting to bring in more, more, more without appreciating what we have. But we do appreciate it. But there's other needs."

As mentioned previously, it is not surprising that increased funding through BEP dollars provides school districts to move in the direction of a centralized vision including the State Department of Education's class size reduction program, mandated by law, and the ConnectTen program involving enhanced technology in the schools. In terms of class size reduction, however, researchers have pointed out that class sizes exceeding 30 students is still too large. Although two of the superintendents stated that class sizes in their districts on average were much lower than the state mandate, the problem remains in determining how small class sizes should be, and the corollary, how much funding is required to meet that size standard. These are adequacy questions that must still be resolved.

SALARY EQUITY

One superintendent suggested that there are other needs that have not been addressed through the BEP. His concern, and the concern of four of the six superintendents interviewed is the need for teacher salary equity. Though superintendents were pleased with the level of funding through the BEP, and one commented that the litigation had a better effect than originally expected, the superintendents were concerned about the level of teacher salary equity in the state. One superintendent commented, "How you pay your teachers kind of sets the tone for the atmosphere and the attitude that the community has for the school system."

Another superintendent commented: "Well the Supreme Court said that you can't have total equality in education until teachers' salaries were equal. What is the definition of equal? It doesn't mean that teachers' salaries have to be identical because other circumstances negate that--cost of living in certain places and those type things." In fact teachers' salaries are not equal in Tennessee. Though the 1995 Supreme Court Decision guaranteed salary equity, and the State of Tennessee provides an equity allocation, using the 1997-98 School Report Card data, the difference between the highest and the lowest average salaries was $15,639 in 1997-1998, ranging from $27,338 in Union County to $42,977 in Oak Ridge City.[103]

Nationally, Tennessee's average teacher salaries are below average. In 1996-97 average salaries of public school teachers in the State of Tennessee were $34,222, and ranked 28 among all states and the District of Columbia..[104] From 1986-87 to 1996-97 the percent

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change in salaries of public school teachers in Tennessee was 51.2% ranking the state 14th among all other states in the nation. These figures suggest that salary equity may have had an impact at least on average teachers' salaries.

As one Department of Education official mentioned, these differences could be due to a number of factors. Salary equity is influenced by higher retirement rates and also FICA allocations. The equity formula also accounts for numbers of teaching positions. The more students who attend school, the more teachers are funded through salary equity funds. Because salary equity is based on instructional personnel, including supervisory personnel, the salary equity formula is driven by other factors like years of experience and educational attainment than simply the number of teachers. Also, according to this official, discrepancies in salary may also be attributed to years of experience and education levels. This official admitted though that salary inequity could be attributed to the ability of wealthier school divisions funding additional costs out of their locally generated revenue, predominantly the local option sales tax.

The Tennessee Small Schools System (TSSE), now known as the Tennessee Small School for Equity, have organized formally and have prepared a Motion for Order, which was submitted in July of 1998. One superintendent interviewed indicated that this time the goal is to ensure that salary equity is achieved throughout the state. This superintendent explained a memorandum that was sent to TSSE members. According to this memorandum, in the last week of March, the Chancery Court Justice asked the TSSE attorney, Lewis Donelson, to remove a portion of their motion regarding the local option sales tax. This local option sales tax, according to the judge handling this new motion, would have taken an entire trial based on its own merits without regard for the fundamental reason for the motion--teacher salary equity. With the local option sales tax out of the way, the motion could be dealt with swiftly since all courts have previously ruled on the need for salary equity. The judge indicated that this motion regarding the local option sales tax could be brought at a later time.[105]

According to superintendents interviewed, the one main issue that arose from discussing the teacher salary equity issue was the problem with the local option sales tax and the Tennessee revenue system in general. Most of the superintendents suggested that the local option sales tax enables certain localities, particularly those localities with commercial businesses, to raise revenue well beyond the level of poor rural school districts. As residents of the poorer areas shop in the larger, more urban areas, their dollars contribute to the funding of the schools in those larger urban areas.

For one rural superintendent this is a difficult problem from the standpoint of keeping quality teachers. Many teachers live in more urban areas and work in the small, rural schools. As they gain more experience they look for jobs in the better paying rural areas. Ironically, the tax dollars that serve as the incentive for teachers to work in the urban areas are funded in part by the citizens of the rural towns who go to the urban areas to shop. One superintendent stated;

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> We're not hard nosed about it. We know they need to pay more in Memphis than they need to here, but not $15,000-$16,000 more. Our teachers, the high school teachers already live in Jackson, so they can stay at home and get a $15,000 raise when they leave [our county] and move to Jackson. And they take our money and pay them. That's what's so galling about the whole thing.

As many of the superintendents mentioned, however, salary equity is endemic of much larger problems of fairness in revenue generation. As long as certain localities, primarily urban centers and those communities surrounding urban centers have the ability to raise revenue through increased sales tax, and other localities do not, there will always be inequity.

TAX ISSUES

State funding in Tennessee relies heavily on taxes on sales and services and also on tobacco, mixed drink, and litigation privilege taxes. The litigation privilege tax is allocated directly to the Department of Education and placed directly in the Education Trust Fund for driver education training programs. In recent years Tennessee raised the sales tax to improve education, both in 1984 and in 1992 by one-half percent each year. Concern over the targeting of increased sales tax revenue to education led the Tennessee General Assembly to pass a resolution in 1993 requiring the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to track the flow of new money resulting from sales tax increases. TACIR found in 1993, 1994, and 1995, new appropriations for K-12 education exceeded the funds earmarked for the sales tax increase. Researchers from TACIR concluded that revenue generated from the one-half percent sales tax increase in 1992 was being spent entirely for education.

Local school funding sources are derived primarily from property taxes with some revenue coming from sales taxes. According to TACIR reports, the local property tax accounts for 54% of total local revenue, while 42% is derived from local sales tax. Other local taxes comprise the remaining percentage with all percentages of local revenue varying according to their respective districts.[106]

A state finance expert indicated there were numerous problems with the tax system in Tennessee. In 1994, the State of Tennessee developed a loophole in the tax structure allowing businesses to become exempt through becoming Limited Liability Corporations (LLC). Ordinarily these businesses would pay franchise and excise taxes. However, as LLC's they are exempt from these taxes, and as a result the state receives less revenue than it would if the LLC's were not allowed in the state.

A second problem with the tax system is the heavy reliance on the sales tax. Since the state does not have and income tax, the state sales tax is the primary source of revenue in the state. This has serious implications for a number of reasons. As several superintendents mentioned, a sales tax is a regressive tax--everyone pays the same

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amount regardless of income. Thus, people with better jobs and income, typically people living in more suburban and urban areas, pay a smaller percentage of their share than less affluent people.

A third problem that affects the small and rural communities is the propensity for people to shop in places where goods are cheaper and more plentiful. Tennessee's current sales tax is 6% and the local option sales tax can reach as high as 2.75% depending on the locality. Thus, if more affluent areas place a smaller local option sales tax on products sold in their area, it is likely that people from less affluent areas will go there to shop. This is especially true when the better places to shop with more selection happen to be in the more affluent areas. This generates greater revenue for urban, affluent areas, while poorer rural areas remain at best unaffected or lose potential revenue.

A fourth problem is that the high sales tax also creates problems for the state as a whole since Tennessee borders seven other states, all with lower sales tax. According to one finance expert, 52% of Tennessee's population live in border counties. Thus people go to these border counties, across state lines, to spend their money. The problem of "border leakage" was addressed by TACIR. After studying this phenomena, it was concluded that "there is no consistent difference between the mean total retail sales per capita for border versus non-border counties. In seven of the eleven years the mean difference showed higher per capita total retail sales in non-border counties, but in four years the mean was higher in the border counties". While the tax differentials were important they are counterbalanced by the large retail centers in border counties like Shelby, Hamilton, Montgomery, and Sevier.[107]

One superintendent gave an example of this problem occurring in South Fulton, Tennessee. South Fulton, he said, borders Fulton, Kentucky. As a result of the high sales tax in Tennessee, residents of South Fulton cross the state line and shop in Kentucky. He stated that there were no grocery stores in South Fulton, TN because the border with Fulton, KY runs through the middle of the town.

A final problem created by heavy reliance on the sales tax is that the overall tax is inelastic. Though the Tennessee economy has grown steadily over the course of the 1990's, sales tax revenue has not grown with it. As more people populate the state and more demand is placed on state provided services, the current tax system is incapable of keeping up with the demand. Based on the National Education Association's *Rankings of the States*, in 1993-1994, Tennessee ranked 42nd and 43rd in local property tax and state individual income tax per capita, respectively in the U.S. However, Tennessee ranked 8th in per capita state general sales tax. Because Tennessee relies heavily proportionally on the general sales tax, the sales tax will ultimately comprise the major source of future revenue increases.[108] As a result, the last two Governors of the state have been forced to raise the sales tax to maintain pace with increasing revenue demands.

This consistent need for the legislature to raise the state sales tax has most recently caused the current state Governor, Governor Sundquist, a Republican, to change his stance on the highly divisive issue of the state income tax. In May of 1999, the state

legislature finally ended the session without identifying any real tax reform measures despite having met earlier in the year in a special session. The sole purpose of the special session was to develop a better revenue system than currently exists in the state. Governor Sundquist broke with his fellow Republicans and urged legislators to pass a state income tax. Like his predecessor, Governor McWherter, the legislature was unwilling to take so drastic of a measure and face rising opposition by their constituents. As a result, the General Assembly departed without addressing the tax revenue problem. More importantly, they adopted a series of budget cuts and tax increases to "patch" the existing problem. The legislature voted to close $140 million in tax loopholes by extending the franchise and excise taxes to limited liability companies and partnerships by preventing businesses from sheltering income out of state. The state will also raise $118 million by requiring companies which now pay annual franchise taxes on assets, to pay them quarterly.[109] Two superintendents identified themselves as Republicans, but both blamed the Republican party in Tennessee for adamantly refusing to pass a state income tax, which they believe greatly harms the ability of small and rural schools to compete with more affluent school districts in terms of local dollars spent for education.

One area of cuts approved for the coming fiscal year was a salary increase for public employees including teachers totaling $26 million. Fortunately, these cuts were not as severe to education as they might have been. The Commissioner of Education was prepared for budget cuts of up to $40 million but the General Assembly backed down. One superintendent interviewed indicated that if the cuts were enacted, as the General Assembly had intended, the cuts would seriously have impacted the extended contract and career ladder programs for teachers and the district's summer school program. The superintendent indicated that the summer school would probably not have been able to provide similar offerings as in previous years if the legislature would have cut the $40 million from the budget.

Though the cuts to education only affected salary increases, the failure of the General Assembly to address the budget crisis coupled with the failure to enact pay raises for teachers has serious implications for the future of public education in Tennessee. Several legislators who were interviewed by the local press indicated that it was entirely likely that the Governor will call a special session of the legislature in the fall to jointly identify long-term solutions to the budget crisis. "I really hate it-- that the state employees didn't get a pay raise", said Senate Majority Leader Ward Crutchfield. "Maybe now people will believe that there is a real crisis." Senator Crutchfield indicated that he did not like special sessions of the legislature, but he stated that the special session was necessary.[110] Representative Bill McAfee believes that the special session will result in a state income tax. "This legislature will have to pass a state income tax. It's going to have to come-- maybe as early as November."[111]

According to a leading finance expert interviewed for this study, serious revenue reform will probably not occur until the Governor and key members of the legislature are elected on a platform of revenue reform. This expert, and several of the superintendents interviewed, indicated that a major task of the leading political figures is to educate the public about the need for serious reform. As one superintendent suggested, education of

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the public is vital in order to achieve serious tax reform. He related a time when he was asked to speak to a group of bus drivers, custodians, and cafeteria workers about the budget problems in Tennessee. When he mentioned an income tax, he was not well received by his audience. This puzzled him, because as he said, "the very people that an income tax would help are opposed to it". Other superintendents suggested that it would take a great deal of time and effort to explain to the public why there is a budget crisis and explain potential remedies. As one superintendent stated, "It is extremely important for the public to understand what is going on. Failure to educate the public will result in another budget shortfall, probably sooner than the next eight years."

The problems of rural and small schools in Tennessee prior to the implementation of the BEP were not unlike those faced by many other school districts in the United States. In fact, Tennessee faced significant difficulties as a result of the sheer numbers of small and rural school districts in the state. Compounding the problem, was the reliance on sales tax resulting in the inability of local school districts to raise revenue. These problems entice rural consumers to go elsewhere in and out of the state to spend their money. With the enactment of the BEP, gaps in funding between small and rural schools are believed to have decreased. Small and rural school districts have enjoyed increased funding and, in their superintendents' opinion, prosperous and productive years. Increased funding has allowed choc' districts to hire additional personnel, improve facilities, and improve programs; projects that were inconceivable under the TFP. Additionally, school districts are working diligently to reduce class sizes, incorporate technology, and help students achieve.

Yet evidence suggests that this may still not be enough. Though gaps in funding may have been reduced the overall level of funding for public education is still very low compared to other states. Though many of the superintendents interviewed are especially grateful for the additional funding, they also recognize that funding levels are still deficient in certain areas. Most prevalent, is teacher salaries. As one finance expert said,

> Superintendents may have difficulty recognizing the shortcomings of state finance support in their districts since funding for education is probably better than it has ever been. However, more funding for education does not necessarily mean adequate funding for education.

Another problem with state funding in Tennessee relates to state budget difficulties. With increased need for state dollars to fund TennCare and corrections programs as well as education, the legislature will be hard-pressed to obtain the dollars to support programs at increased levels. Although the legislature is prohibited from taking funds out of the Education Trust Fund, they are able to use other funds earmarked for education in the form of Connect Ten funds, as well as refusing to fund additional expenditures like teacher salary increases. Thus, if Tennessee does not address the funding crisis, school systems may once again be the recipients of state budget reductions that adversely impact all schools, but especially small and rural school districts.

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Furthermore, the pending motion in the Chancery Court of the Tennessee Small Schools for Equity, may provide yet another problem for the General Assembly which would have to provide greater revenue for salary equity. Thus, with the budget crisis still unresolved and increasing demands placed on state revenue, possibly for teacher equity and certainly for other state programs like TennCare, it is possible that future budget cuts may run deeper for education in Tennessee. As one finance expert suggested;

> The General Assembly, in conjunction with other interested parties, needs to determine a more adequate level of funding. The General Assembly must devise a method of funding that is equitable to the taxpayers, and provides sufficient revenue to keep up with the growing economy in Tennessee.

Although it is still too soon to determine what course of action the state might take, the funding of small and rural schools, and for the state in general, is still in the balance. The next 6-12 months may possibly determine the future of funding for K-12 schools in the State of Tennessee, with an overhaul of the revenue system. For the small and rural school superintendents interviewed in this study, a restructuring of the revenue system is what they are counting on.

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APPENDICES

Appendix A. Non-Classroom Compnents

Appendix B. Description of Interviewees

Appendix C. Interview Guide Questions

Appendix A. Non-Classroom Components
(State Share = 50%)

COMPONENT	FUNDING LEVEL
Superintendent	1 per county ***
System Secretarial Support	1 per system <500 2 per system 500-1,250 3 per system 1,251-1,999
Technology Coordinators	1 per system with one additional for each 6,400 ADM
School Secretaries	.5 per school <225 1 per school 225-374 1 per 375 per school >375
Maintenance & Operations	100 square feet per total K-4 ADM 110 square feet per total 5-8 ADM 130 square feet per total 9-12 ADM Total sq ft x $2.32/sq ft**** 1 custodian per 20,714 calculated sq ft
Non-Instructional Equipment	$13.00 per total ADM
Pupil Transportation	Allocated to systems that provide transportation. Formula established by Commissioner of Education. Based on number of pupils transported, miles transported, and density of pupils per route mile.
Staff Benefits & Insurance	$1,997.86 per BEP position for insurance; plus 7.65% of BEP salary per Superintendent and technology coordinator OR 3.86% of BEP salary per classified position for TCRS
Capital Outlay	100 sq ft per total K-4 ADM x $61/sq ft 110 sq ft per total 5-8 ADM x $68/sq ft 130 sq ft per total 9-12 ADM x $64/sq ft Add equipment (10% of sq ft cost) Add architect's fee (5% of sq ft cost) Add debt service (20 yrs @6.00%) Divide total by 40 yrs=annual amount

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(State Share = 75%)

COMPONENT	FUNDING LEVEL
Regular Education	1 per 20 ADM K-3
	1 per 25 ADM 4-6
	1 per 30 ADM 7-9
	1 per 26.5 ADM 10-12
Vocational Education	1 per 20 vocational education FTEADM
Special Education	(Caseload allocations)
(number of students identified and served=I & S)	Option 1 91 Option 6 2
	Option 2 73 Option 7 10
	Option 3 46 Option 8 6
	Option 4 25 Option 9 0
	Option 5 15 Option 10 10
Elementary Guidance	1 per 500 ADM K-6*
Secondary Guidance	1 per 350 ADM 7-12 (including voc ed)*
Elementary Art	1 per 525 ADM K-6
Elementary Music	1 per 525 ADM K-6
Elementary Physical Education	1 per 350 ADM K-4
	1 per 265 ADM 5-6
Elementary Librarians (K-8)	.5 per school <265
	1 per school 265-439
	1 per school 440-659 (+.5 assistant)
	1 per school > 660 (+1 assistant)
Secondary Librarians (9-12)	.5 per school <300
	1 per school 300-999
	2 per school 1,000-1,499
	2 per school > 1,500 (+1 per add'l 750)
Substitute Teachers	$32.00 per total ADM
Instructional Assistants	1 per 75 ADM K-6
Special Education Assistants	1 per 60 special education I & S in Options 5,7,8
Principals	.5 per school <225**
	1 per school >225
Assistant Principals Elementary	.5 per school 660-879
	1 per school 880-1,099
	1.5 per school 1,100-1,319
	2 per school >1,320
Assistant Principals Secondary	.5 per school 300-649
	1 per school 650-999
	1.5 per school 1,000-1,249
	2 per school >1,250
	(+1 per add'l 1,000)
System-Wide Instructional Supervisors	1 per <500 total ADM
	2 per 500-999 total ADM
	3 per 1,000-1,999 total ADM
	3 per >2,000 total ADM (+1 per add'l 1,000)
Special Education Supervisors	1 per 750 special education I & S
Vocational Supervisors	1 per 1,000 vocational education FTEADM
Special Education Assessment Personnel	1 per 600 special education I & S
Social Workers	1 per 2,000 total ADM*
Psychologists	1 per 2,500 total ADM*

(State Share = 75%)

COMPONENT	FUNDING LEVEL
Nurses	1 per 3,000 total ADM (min. +1 per system)
Alternative Schools	$2.38 per total ADM K-12 plus $19.98 per ADM 7-12 (including voc ed)
K-3 At-Risk Class Size Reduction	Systems are allocation additional teachers to reduce pupil-teacher ratio to 15:1 for 1/3 of students on free and reduced lunch
Duty-Free Lunch	$7.27 per total ADM
Special Education Early Intervention	Early intervention services for 3-year old children with disabilities. Now allocated through count of special education I & S
Staff Benefits & Insurance	$1,997.86 per BEP position for insurance; plus 7.65% of BEP salary for FICA. Add 5.47% of BEP salary per licensed position OR 3.86% of BEP salary per classified position for TCRS
Textbooks	$57.00 per total ADM
Classroom Materials & Supplies (includes fee waiver)	$34.00 per regular ADM $97.00 per vocational education FTEADM $19.00 per special education I & S $20.00 per Academic exit exam (12th grade) $30.00 per Technical exit exam (1/4 voc ed)
Instructional Equipment	$33.00 per regular ADM $80.00 per vocational education FTEADM $12.00 per special education I & S
Classroom Related Travel	$2.00 per regular ADM $13.00 per vocational education FTEADM $7.00 per special education I & S
Vocational Center Transportation	For participating systems to transport students to vocational center attended part of the day
Technology	$22.39 per total ADM $20 M distributed on ADM basis

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(State Share = 75%)

Salaries Used in BEP Calculations

Teachers and other Licensed Personnel:

The BEP allocation for salaries for each school system is based on:

The number of each type of position generated by the cost components

The current average salary for licensed personnel in that school system, based on the state salary schedule (including Training and Experience factors).

Other Personnel:

Average annual library/instructional assistant salary = $13,400

Average annual custodial salary = $13,700

Average annual school secretary salary = $19,500

Average annual system secretary = $23,300

Source: Roehrich-Patrick, L. Lynnisse (1999). "How Tennessee is Using a Basic Education Program to Improve Equity and Adequacy" Tennessee Department of Education. Paper presented at Nashville Finance Conference, Spring 1999. See notes*.

NOTES:

* If a system within a county having more than one system does not have enough pupils to qualify for a position, the relevant county totals are used and each system receives a pro rata share based on its proportion of total relevant enrollment. If county totals are not sufficient to generate a position, the county is allocated one position and each system is allocated a pro rata share of the position based on its proportion of the relevant enrollment.

** Elementary schools < 100 are not allocated a principal.

*** One superintendent is allocated for each county. If there is more than one school system in a county, each system receives a pro rata share based on its proportions of total county ADM.

**** For purposes of calculating benefits and insurance: for maintenance add 60% of sq ft cost to salary allocation; for pupil transportation add 45% of amount to salary allocation. Apply calculated rate (ins, FICA, TCRS) for classified personnel as specified to 50% or 45% of allocation, respectively.

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Appendix B. Description of Interviewees

Six superintendents total, all from rural areas:

- Three from County School Districts
- Two from City School Districts
- One from a Special School District

One state finance expert and university professor

Two directors within the Tennessee Department of Educational Division of Finance, Accountability, and Business

One legal expert who participated in the lawsuit

A researcher with the Tennessee Advisory Commission on Intergovernmental Relations

An employee with the Division of Property Assessment, State of Tennessee

An employee with the State Board of Equalization, State of Tennessee

Appendix C. Interview Guide Questions

What effect has the State Supreme Court litigation had on the funding of small and rural schools and districts in the state?

In what specific ways have small and rural schools benefitted from State Supreme court litigation?

What issues did the defendant intervenors raise during the litigation?

What were the concerns of the small and rural school districts?

What were the political and economic forces that contributed to the litigation and the concerns of small and rural school districts?

What issues have not been addressed under the current funding system?

What remedies might address these concerns?

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CHAPTER 3

COMING AROUND AGAIN: EQUITY LITIGATION AND WISCONSIN RURAL FINANCE

Deborah A. Verstegen

The Wisconsin Constitution, adopted in 1848, provides that "The legislature shall provide by law for the establishment of district schools, which shall be *as nearly as uniform as practicable* . . . ."[1] For over 150 years the legislature has grappled with the question of how to achieve this mandate, particularly as social, economic and demographic changes have conditioned concepts of what is "as nearly as uniform as practicable."[2]

Today, this question has once again returned to the top of policy agendas, propelled by the onset of the information age, technological revolution and global economy. At the same time, a challenge to the constitutionality of the Wisconsin education finance system is currently awaiting review by the Wisconsin Supreme Court.[3] The finance system was upheld by the high court in 1989 in *Kukor v. Grover*.[4]

This chapter discusses the impact of school finance litigation on rural and small schools in Wisconsin. First, the 1989 Supreme Court decision on the constitutionality of the state finance system is discussed. Next, social, economic and demographic changes in Wisconsin over the 1990s are reviewed. Third, the Wisconsin school aid system is examined and analyzed. Finally, the current challenge to the constitutionality of the state aid system, is discussed and a summary is provided. Throughout, issues related to rural and small schools are highlighted.

STUDY METHOD

Data for this study were taken from documents available in the field, the analysis of finance information produced for this study, and interviews with individuals in Wisconsin chosen on a positional and reputational basis.[5] A snowballing interview technique was used: respondents were asked to name other individuals knowledgeable about the issues of interest. Most interviews were undertaken by telephone; a limited number occurred face to face. Data were collected in the field during a trip to Wisconsin;[6] at that time, knowledgeable individuals were contacted and discussions occurred around areas of particular interest related to school funding. For analysis purposes, findings from interviews, documents and data analyses were triangulated. The overarching purpose was to determine whether school finance litigation had an impact on rural and small schools

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and districts, what that impact was, and what continuing issues have emerged over time. The study proceeded in three stages: exploration, description and verification.

SCHOOL FINANCE LITIGATION
KUKOR V. GROVER (1989)

Over a decade ago, in 1989, the Wisconsin Supreme court handed down its opinion upholding the Wisconsin school finance system in the case, known as Kukor v. Grover[7]. The Court stated that: 1) the statutory system of determining state aid to public school districts did not violate the uniformity requirements of the State Constitution simply because it resulted in certain districts having inadequate funds to provide specialized programs and meeting particularized needs of impoverished students, and 2) the state financing system did not violate the equal protection provisions of the State Constitution, because disparities in per pupil expenditures were rationally based upon the preservation of local control over education as mandated by the Supreme Court.[8]

The high Court held that education was a fundamental right under the Wisconsin constitution and entitled a student to a basic education--but not uniform financing or extra funds for high costs. A basic education was defined under Article X, section 3: the "character of instruction" was required to be uniform as defined by state minimum standards, such as teacher certification, minimal school days and standard school curriculum.[9]

The Court found that districts with a high concentration of students from families living in poverty were required to spend more per student but had fewer available resources to spend.

> The wide expenditure and tax effort disparities in Wisconsin school districts lead to a substantial lack of equality and uniformity in the program of instruction available to all the school children in the low spending districts, and as we have observed act as a drain on the regular program of instruction in districts with very high poverty concentrations.[10]

Nonetheless, the plurality ruled that the finance plan was sound as a matter of constitutional law, there being no requirement to meet the particularized needs of disadvantaged students beyond the provision of basic education programs[11]. Coming to these conclusions the majority upheld the decision of the circuit court that had sustained the constitutionality of the plan despite serious misgivings as to its adequacy in addressing the needs of the poor.[12]

The majority noted that during litigation select programs addressing poverty for some children were enacted by the legislature. However, the high court took the opportunity to mention that although variations across school districts in special needs and their associated costs were not found unconstitutional, more assistance for special needs was

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necessary and desirable, to wit: "...while the greater uniformity in educational opportunities is, in the opinion of both parties, desirable and necessary, it is not something which is constitutionally mandated under the uniformity provision."[13]

Further, the high court opined:

> We recognize that more and improved programs are needed in the less affluent or overburdened districts but find that these legitimate demands may not be correctly described as claims for uniformity under [the] Wisconsin Constitution, Art.X, sec. 3....such claims must be made to the legislature.[14]

The finance system was upheld by the plurality using the rational basis test; local control and deference to the legislature on education spending matters were the legitimating rationales.

In a concurring opinion, J. Steinmetz underscored this issue, writing: "This case has been a public cry to the legislature, disguised as a constitutional attack, that additional funds are necessary to improve education in some districts."[15]

The minority opinion, written by J. Bablich representing three members of the Court, took issue with the main tenets of the majority opinion but found special needs of high cost children compelling. The dissent found that the issue in the case was not "spending disparities" but whether the state, through its finance system, met its constitutional obligation to provide an equal educational opportunity for all children within the state, "rich and poor alike." According to the dissent: "it has not". This conclusion was based on an "ample" record, it said, including four points that all members agreed on.[16] These included:

> 1) it is a fundamental right of each child in the State to have an equal opportunity for education,
>
> 2) the state is constitutionally mandated to provide that opportunity,
>
> 3) the method the state has chosen to fulfill this responsibility is the statutorily created system of financing K-12 education,
>
> 4) the trial record clearly established that the educational needs of a significant number of school children in this state, primarily those from high poverty districts, are very great, and these needs are not being met. These children come to school unready to learn. Compensatory education programs are unavailable to remedy their learning deficiencies. Supportive services and exceptional educational needs are insufficient to assist them. The little money that is channeled to these programs comes at the expense of the regular educational programs, thereby "shorting" the regular programs.[17]

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The "fundamental flaw" in the system, the dissent said, was "dollars without regard to educational needs." The result, it said, was: "a significant number of school children in this state are denied an equal opportunity to become educated people."[18] The mandate of Article X, section 3, Wisconsin Constitution, it said:

> is that the state provide a character of instruction in the state schools such that all children are provided with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.[19]

SOCIAL, ECONOMIC AND DEMOGRAPHIC CHANGES

Over the past decade, social, economic and demographic changes occurred in Wisconsin, that impact rural and small schools and districts in the state and the context in which the legislature must decide whether the finance system is "as nearly as uniform as practicable." These indicators are shown in Table 1 and include ranks to determine the position of Wisconsin compared to other states in the country.[20]

Wisconsin is a fairly large state with a sizable school population. In resident population, Wisconsin ranked 16th in 1990 (4.9 million) compared to other states within the U.S.; but this fell to 18th in 1998 (5.2 million). Projections indicate the population will continue to decline to a rank of 20th by 2025. Sixty-eight percent of the population lived in metropolitan areas in 1990; this fell slightly to 67.7% in 1998. Approximately 26% of the population were under 18 years in 1990; a figure that held steady over the decade, ranking Wisconsin 21st.

School-aged persons (aged 5 to 17) numbered 860 thousand in 1990, but 870 thousand in 1995. This is 19.7% of the U.S. school population, ranking Wisconsin 17th. Persons 65 years or older made up about 13% of the population over time, ranking Wisconsin 21st (1995).

In 1995, income per capita ($22,379) was slightly below the U.S. average ($22,379). The percent of the population in poverty was 8.5%; this is below the U.S. average of 13.6%. However, children made up a disproportionate share of poverty: 13.9 % were under age 18 and 16.7% were under age 5.

Wisconsin's state and local general revenue in 1993-94, the latest year data were available, ranked 13th. Tax revenue from the property tax was high--Wisconsin ranked 8th; state individual income tax was high--Wisconsin ranked 7th; but the general sales tax was average, Wisconsin ranked 20th. State and local expenditures on public welfare ranked 15th, health and hospitals, 33rd; police protection, 14th; fire protection, 14th; highways, 16th; but revenue for local public schools, ranked 9th--ranking Wisconsin high in the country in terms of spending on schools.

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Table 1. Rankings of Wisconsin a/

WISCONSIN	Rank	State	U S	Table
DEMOGRAPHICS				
Resident population in 1995 (in thousands)	18	5,123	262,755	(A-1)
Percent age 5 to 17	17	19.7%	18.7%	(A-6)
Percent age 18 and over	31	73.6%	73.8%	(A-7)
Percent age 65 and over	21	13.3%	12.8%	(A-8)
ECONOMY				
Personal income in 1995				
Total (in millions)	18	$114,628	$6,137,879	(D-1)
Per capita	23	$ 22,379	$ 23,348	(D-3)
As % of national average	23	95.8%	100%	(D-4)
Per pupil in ADA	24	$143,298	$ 150,452	(D-12)
GOVERNMENT REVENUE				
State and local general revenue from own sources in 1993-94				
Per capita	13	$ 3,614	$ 3,399	(E-2)*
Per $1,000 of personal income	9	$ 171	$ 153	(E-3)*
State and local tax revenue in 1993-94				
Per capita	9	$ 2,698	$ 2,402	(E-4)*
Per $1,000 of personal income in 1994	5	$ 127	$ 108	(E-5)*
Tax revenue by major source in 1993-94				
Per capita				
Local property tax	8	$ 994	$ 725	(E-7)*
State individual income tax	7	$ 768	$ 478	(E-13)
State general sales tax	20	$ 502	$ 504	(E-14)
Per $1,000 of personal income in 1993-94				
State and local property tax	5	$ 47	$ 34	(E-9)
State individual income tax	4	$ 34	$ 20	(E-15)
State general sales tax	24	$ 22	$ 22	(E-16)
GOVERNMENT EXPENDITURE				
State general expenditures in 1993-94				
Per capita	22	$ 2,839	$ 4,125	(G-1)
Per $1,000 of personal income in 1992	16	$ 204	$ 186	(G-4)

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WISCONSIN	Rank	State	U S	Table
State and local expenditures by major function in 1993-94 Per capita				
Local public schools	9	$ 1,096	$ 949	(H-8)
Public welfare	15	$ 739	$ 691	(G-5)
Health and hospitals	33	$ 276	$ 386	(G-6)
Police protection	14	$ 221	$ 210	(G-7)
Fire protection	27	$ 93	$ 124	(G-8)
Highways	16	$ 351	$ 277	(G-9)
SCHOOL FINANCE EFFORT				
School revenue in 1994-95 Per $1,000 of personal income in 1995	9	$ 52	$ 45	(F-5)
School expenditures in 1994-95 Per $1,000 of personal income in 1995	8	$ 46	$ 40	(H-13)
SCHOOL FINANCES (CURRENT YEAR)				
School revenue in 1996-97				
Per pupil ADA	11	$ 8,157	$ 7,141	(F-4)
Percent of total from				
Local	28	41.1%	44.5%	(F-8)
State	20	54.5%	48.7%	(F-10)
Federal	45	4.5%	6.7%	(F-11)
Current expenditures in 1995-96 Per pupil ADA	13	$ 6,782	$ 6,133	(H-14)

a/ Data Source: NEA (1998). Rankings of the States, 1997. Washington D.C.: Author, 1998.

School revenue for 1996-97 averaged $8,157 per pupil in ADA (average daily attendance) ranking Wisconsin 11th. Of this, 41.1% was derived from local sources; 54.5% from state sources; and 4.5 % from federal sources. Currently two-thirds of all school funding is paid for out of state coffers; one-third is funded locally.

In 1998-99 there were 426 school districts in Wisconsin, including ten Union High School Districts, that received incoming 9th graders from several of the 47 underlying elementary (K-8) districts. These districts enroll 881,248 students.21 The school population was 82.27% white; 1.37% American Indian or Alaskan Native; 9.71% Black; 3.64% Hispanic, and 3.01% Asian American or Pacific Islander.

A significant number of school districts in Wisconsin are rural or small. Of all 426 school districts, 83 had enrollments of 1-499 students; 125 had enrollments of 500-999 students; 115 had enrollments of 1,000 to 1,999. At the other extreme, 11 districts had enrollments

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of 10,000 or more. For secondary schools only, 47 had enrollments of no students; 138 had enrollments of 1-299 students; 90 had enrollments of 300-499 students; and 87 had enrollments of 500-999 students. Only 64 districts had secondary enrollments above 1,000 students. According to an expert in school finance: "the wealthy rural and small districts are in the Southeast. Most are K-8 or Union High School Districts. The rural poor are in the Northeast and Southwest."

WISCONSIN STATE SCHOOL AID SYSTEM

Changes have also occurred in the Wisconsin finance system over the decade. The state of Wisconsin funds primary and secondary schools using a guaranteed tax base system. The main goal of the finance plan is to equalize the ability of local residents to raise funds for schools by equalizing property tax bases, but to leave the decision over how much to spend to the people or their elected representatives.

The basic concept of equalizing differences in local property tax bases of school districts, in an effort to provide equity for taxpayers and children has been promoted through Wisconsin's general school aid formula since 1949, but the current finance system has its genesis in legislative changes enacted in 1973-75. The system was restructured in 1995. At that time, the current three tiered guaranteed tax base system was adopted to replace the previous two tiered system. Also, the state committed itself to funding two-thirds of the cost of primary and secondary schools and revenue controls were made permanent.[22] (These changes are discussed further below.)

Equalization aid is the primary source of state aid; as stated, it is distributed to school districts through a Guaranteed Tax Base system (GTB). Under a GTB, the state guarantees a certain amount of property wealth behind each pupil for different levels of spending. If a district's property tax base falls below the guarantee, state aid is provided to make up the difference.[23]

Table 2 shows the current guarantees for Tiers I, II, and III for the 1998-99 school year. Localities determine spending and tax rates; the state makes up the difference in the amount of funding raised from the local tax base to the guaranteed tax base level, but places a limit on per pupil expenditures that are assisted by state aid. As shown, the first tier (primary aid) guarantees a tax base of $2,000,000 per pupil for the first $1,000 per pupil spent on schooling. The second tier (secondary aid) guarantees a tax base of $676,977 per student for spending ranging from $1,001 to $6,285 per pupil. The third tier (tertiary aid) guarantees the state average tax base, $263,240 per pupil for local spending above $6,285. In addition, 37 categorical aids are added to basic aid, and are distributed by the state as a flat grants (a uniform amount of aid). Despite the large number of categorical aids provided by the state, there is no extra funding for rural and small school districts, nor does the state provide adjustments in basic aid for school or district size.

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Table 2. Wisconsin's Three-Tiered GTB 1998-99 State Aid Year

	Guaranteed Tax Base per Member	Shared Cost Ceiling per Member
First Tier	$2,000,000	$1,000
Second Tier	676,977	1,001-6,285
Tertiary Tier	263,246	none

The purpose of Guaranteed Tax Base System is to provide taxpayer equity or equal yield (funding) for equal effort (tax rates). Usually these finance systems include a sliding scale that provides increased amounts of state aid for each increase in local resources and a maximum and a minimum level of local resources is specified. Also, negative aid is assumed, that is, districts raising more than the guarantee are required to return the additional funding back to the state for redistribution. Currently only Wisconsin and Indiana use Guaranteed Tax Base systems to pay for public elementary and secondary schools.[24] Since the 1970s, states using some variant of this type of system to fund primary and secondary education have fallen almost 70%.

ISSUES RELATED TO WISCONSIN SCHOOL AIDS

According to scholars, education officials and individuals that were interviewed for this study, pupil and taxpayer equity is compromised under the Wisconsin school aid system for several reasons.[25] First, is the lack of negative aid. Second, is the provision of "minimum aids" under Tier I--also called the primary guarantee. Third, are the 37 categorical aids that are provided to school districts as flat grants regardless of local ability-to-pay for schools or tax rates. Fourth, levy credits reduce equalization aid while assisting mostly high wealth districts--in direct opposition to the goal of taxpayer equity which demands revenue be based on equalized tax rates not the amount of tax dollars paid by localities. Likewise, special adjustment aid, provided to cushion changes in aid from year to year, has the effect of limiting the equalization by off-setting the link between revenue and taxes.

Other major disequalizers in the funding system include the underfunding or nonfunding of special needs. When state funding is inadequate to pay for the excess costs of high need students, local districts essentially have two choices: to take revenue from the general education budget to pay for the special needs of students thereby lowering

funding available for the general school program, or to ignore the needs of those students who most need special programs and services. The encroachment of these programs on general aid restricts taxpayer equity by lowering funding for general educatio... due to the size of the special (bilingual/poverty) population--an irrational feature that results in those districts with fewer special needs students garnering more state aid. This signals a lack of vertical equity and wealth neutrality in the system. In essence, when a child has special educational needs, or a school district has uncontrollably higher costs, the quality of a child's education is a function of local not state wealth, in contradiction to wealth neutrality principles that are presumed to undergird state aid systems.

According to Wisconsin's Department of Public Instruction:

> In a perfectly equalized formula, actual levy rates and "theoretical" or calculation rates would be one and the same. However, not all school costs are shared through the general aid formula in Wisconsin. Categorical aid programs fund costs outside of the equalization aid formula. These programs and other disequalizing factors contribute to differences between the calculation rate and actual equalized tax rates. Other disequalizing factors in Wisconsin's general aid formula are: the provision that primary aid may not be reduced by negative non-primary aid, cancellation of negative primary aid, payment of special adjustment aids, payment of special transfer aids from the equalization aid appropriation, and use of prior year rather than current year, membership, costs, and property value for computation.[26]

Comparison of Two Small School Districts: Rich and Poor. A comparison of two small school districts, one rich and one poor, illustrates these issues. In addition, critics charge that wealthy districts in Wisconsin can tax low and spend high; poor districts, in contrast, tax high but spend low.

In 1997-98, Gibraltor, a small, wealthy school district with $1.7 million per pupil in equalized property value, received $225 per pupil in general aid (primary aid $136 per pupil and special adjustment aid of $89) and $464 in categorical aid from the state. Local property taxes were $4.15 (mills) per $1,000 equalized value and raised an additional $8,460 per pupil. The total expenditure in Gibraltor was $9,140 per pupil.

Bowler, a small, poor school district with $88,193 per pupil in equalized value and 621 students, received $4,867 in state general aids ($955 primary aid; $4,382 secondary aid; $110 tertiary aid) and $321 in categorical aid. Bowler taxed at $8.63 per $1000 in equalized valuation, and raised $690 per pupil in local revenue. The total expenditure from state and local sources of was $6,587 per pupil. Bowler taxed twice what Gibraltor did, yet total expenditures from state and local sources were only 70% of Gibraltor's expenditures. This difference amounts to over $1.5 million per year or and advantage for Gibraltor of $2,562 per pupil. These are nontrivial differences.

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As stated, the Wisconsin school aid system includes approximately 37 categorical aids that are distributed without regard to local ability-to-pay or tax rates. In 1998-99, Gibraltor, with over 20 times the property tax base of Bowler, received $464 per pupil in categorical aid; Bowler received only $321 per pupil. Special education is the largest categorical aid. Special enrollments in Gibraltor comprised 11.1% of enrollments (83 students); special education children in Bowler comprised 15.1% of enrollments (86 students). Nonetheless, Bowler with greater needs and lower ability-to-pay for education out of local sources, received fewer dollars than did Gibraltor.

Over time, state aid in Wisconsin has shifted to equalization aids, and away from categorical aids. In 1989-90 equalization aid was 79.1% of state aid; categorical aid was 17.0%. In 1994-95 equalization aid was 80.8% of state aid; categorical aid was 15%. In 1998-99 equalization aid was 87.1% of state aid; categorical aid was 10.8%. The shift in aid has eroded funding for students in districts with relatively more special needs students that impose higher costs on school systems. Viewed from another perspective, however, according to an interviewee: "There has been an unwillingness to continue to plow a lot of flat aid money into wealthy districts. Wealthy districts get more flat aids under categorical [than from general aid]."

Special Education Assistance. Categorical aids in Wisconsin are not only disequalizing but also underfunded or not funded at all. For example, in special education, the gap between appropriations and authorizations has grown over time. In FY 1997-98, state categorical aid for special education was 31.3% of costs. If special education was fully funded, it would support 63% of the costs of special education costs. Special education costs that are not reimbursed by federal or state categorical aids are eligible for reimbursement under state general equalization aids. In 1997-98, special education costs paid by general equalization aid amounted to $196.2 million. Because increases in costs occurred after the establishment of state revenue limits that restrict total education spending, "increases in special education spending have reduced the spending authority available for regular education in some districts."[27] According to a 1999 report submitted to the Joint Legislative Audit Committee Members:

> Special education costs not paid by federal or state categorical aids are eligible for reimbursement under state general aids, but school district officials note that costs included under general aids are controlled by state-imposed revenue limits. Therefore, *some districts must reduce regular education spending in order to fund special education*, which is mandated by federal and state law (emphasis added).[28]

On average, federal aid pays 4.9% of special education costs. State categorical aid pays for only 31.3% of special education costs; 39% comes from the general education budget. For example, targeted state funds for special education in Bowler cover only 30.8% of the cost. Bowler pays 60% of its special education costs from general aids, thus reducing funding for children in general education programs. Mellen, another small, poor district, receives only 29.6% of its special education funding from state categorical aids. It takes an additional 51.2% from general aids to cover the mandated costs of special education.[29]

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According to one school district official: the "[underfunded] categorical draw down regular education funding". Another pointed out that,

> we don't have any money for the normal kids. The average student is losing, falling by the wayside, because we're frozen [with revenue limits]. The mandated [programs such as special education and limited English Speaking] get the money and the others get lost. The revenue limits keep us from raising money. That is the problem.

Assistance for Limited English Speaking and Economically Disadvantaged Pupils. Not only does special education encroach on regular education; this is also the case with programs for Limited English Speaking (LES) students and economically disadvantaged children. Although the state provides some funding for these children and youth, these programs are not fully funded and do not cover all eligible children and youth. Programs for Limited English Speaking (LES) students for example, are reimbursed at only 21.3% of costs; this figure has fallen from 28% in 1995-96.[30]

For economically disadvantaged children and low achieving children, there is a patchwork of programs that reach some school districts and some school children, mainly in large urban districts. Preschool to Grade 5 grants fund programs in Beloit, Kenosha, Milwaukee and Racine. Children at risk programs, based on prior year drop-out rates, fund pupils that meet certain requirements, such as attendance and the number of credits earned. It is provided to 18 districts. Student Achievement Guarantee, created in 1995, awards five year grants to school districts with at least one school with an enrollment made up of at least 50% low-income pupils, for the main purpose of reducing class size in K-3 to 15 pupils and providing a rigorous curriculum. Eighty schools in 46 districts participate. This program has been expanded but fails to reach all eligible students and schools across the state. For example, in 1998-99, only 7,500 children were supported from SAGE grants; this is less than one percent of children in poverty in the state.[31] It was estimated that 222 schools from 39 school districts were eligible but not funded.

In addition, transportation aid is limited. It is based on a scale that reimburses mileage: the upper limit is 18 miles. This disadvantages sparsely populated school districts that transport pupils in excess of the reimbursed mileage. According to a superintendent:

> Transportation costs take a larger amount for rural [districts]. The per mile payments for students haven't changed [and they top off at] 18 miles. The state pays for oil, gas, things like that. We have some kids 30 miles from school [one way] in two different directions. I got $29,000 from the state--I spent $260,000.

Revenue Limits.[32] The underfunding or nonfunding of categorical aid programs, is exacerbated for some low-spending school districts due to the school district revenue limits. Under the limits, the annual increase in a school district's revenue from general aids (equalization aids, integration aid, special adjustment or hold harmless aid)and property taxes is restricted to $208.88 per pupil in 1998-99; it is adjusted for inflation in

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future years. Additional funds excluded from revenue limits include federal aid, categorical aid, co-curricular/enterprising funds, and additional aid that is provided for consolidation (for five years if consolidation occurred after July 1, 1995).[33] A special "catch-up" provision allows districts with less than $5,600 to raise spending to that amount by 1996-97 and subsequent years. School districts may exceed the revenue limit with voter approval.

According to a small district superintendent, revenue limits have exacerbated disparity among school systems:

> Since Kukor the state has imposed revenue limits. Small, rural and low spending districts are basically frozen. High spending districts continue to do that so disparity between the fiscally conservative and high rollers is exacerbated."

Consolidation Aid. Also, under the state aid system, incentives are provided for school districts to consolidate. For no less than five years, consolidated districts are guaranteed additional aid of no less than the total amount of general aid received by the separate districts in the year prior to consolidation. They also receive a 10% increase in the equalization aid formula's guaranteed valuations and primary cost ceiling which is funded through equalization aids.

Rural and Small District Allotments and Cost Index. The state aid system provides no state funding for a school district's uncontrollably higher costs--such as differences in the cost of doing business; or adjustments for small and rural districts or districts with high enrollments in metropolitan areas--such as Milwaukee public schools. As a superintendent explained: the "state never reimbursed small/rural [districts based on size but] fixed costs as a percent of the budget are higher." However another interviewee believed that: "It has been a local control issue...." "they could consolidate," [the state seems to think] "if those dummies want to continue--that's their problem." Still, this individual said, there were many benefits accruing to students from small schools--such as more student involvement and higher outcomes.

Finally, another provision that is not provided for under the Wisconsin finance system is a cost index; it would adjust funding for variations in the cost of doing business across the state. These indices are utilized in a handful of states including: Florida, Alaska, Missouri, and Texas. According to a finance expert, when asked about the desirability of including this factor in Wisconsin's system: "Perfection is the enemy of what's possible."

ANALYSIS OF THE WISCONSIN SCHOOL FINANCE SYSTEM

Have conditions improved for rural and small districts since the supreme court ruling in Kukor? According to a superintendent, who expressed the sentiment of several other rural and small school district officials: "No...in my opinion, things have gotten worse. There is more of an imbalance since Kukor." Another observer explained: "Kukor is being

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interpreted to mean absent a complete denial of education then the system is ok." Also, an interviewee pointed out, there are some basic problems with the formula, mainly the assumptions that "all kids cost the same to educate, and the revenue controls that assume a static student base." However, a finance expert opined: "it's better now-more money is flowing. The state provides two-thirds of costs and most of it is general aid."

Given the changes in the state funding system that have occurred over time, and the sentiments of interviewees, researchers and others concerning equalization, analyses were performed to determine the level of equity in the system, and whether district tax rates were linked to spending on children in schools. The state aid system has as its primary goal equity for tax payers. This means that equal tax rates across the state should provide equal funding for students regardless of local ability to pay for education. As education is considered a fundamental right in Wisconsin, another important goal of the funding system, is to provide equal opportunities to children that are not conditioned on irrelevant factors, such as local ability to pay for education out of real estate taxes.

TAX RATES AND SPENDING

An analysis was undertaken to determine the extent to which tax rates would explain variations in school funding among school districts with the state. Tax rates on local property used for schools were compared to school district revenue per pupil. Revenue included general and categorical aid and the gross property tax levy. Transportation aid and special education funding were deleted, as these aids are provided out of state categorical aid for special educational needs of districts or students--legitimate bases for differentiation.

Findings of the analysis are shown in Tables 3 & 4. They showed that the relationship between tax rates and school district spending was moderate (r=.55). A bivariate regression analysis indicated that a district's tax rate explained less than one-third of the variation (30%) in state and local revenue in 1997-98. These findings suggest that taxpayer equity--equal yield for equal effort--is compromised under the Wisconsin Guaranteed Tax Base System.

FISCAL EQUITY ANALYSIS

Two fiscal equity analyses, using multiple statistics, were undertaken to determine the extent to which fiscal equity existed in the Wisconsin school finance system. Univariate equity statistics were computed for total state and local aid, including general aid, categorical aids (minus state special education aid and transportation aid) and the gross property tax levy.[34] The first set of computations measured variations in revenue per pupil. However, because of concerns related to the need for funding based on a child's special educational needs, a second set of computations were completed to determine variations in aid for weighted pupils. Pupils were weighted based on research estimates of the cost of special adjustments.[35]

Table 3. Correlation Analysis of Education Revenue and Property Tax Rates

Simple Statistics

Variable	N	Mean	Std Dev	Sum	Minimum	Maximum
Revenue	426	7132.027958	733.399565	6132345863	5456.737243	13041
Taxes	426	11025	2023.762870	9479632796	2545.000000	20490

Pearson Correlation Coefficients / Prob > |R| under Ho: Rho=0 / N = 426 / WEIGHT Var = PUPILS

	REVENUE	TAXES
REVENUE	0.0	0.55196 0.0001
TAXES	0.55196 0.0001	1.00000 0.00000

Table 4. Regression Analysis: Education Funding and Property Tax Rates

Analysis of Variance

Source	DF	Sum of Squares	Mean Square	F Value	Prob>F
Model	1	140897686077	140897686077	185.770	0.0001
Error	424	321583845607	758452466.06		
C Total	425	462481531684			

Root MSE	27540.01572	R-square	0.3047
Dep Mean	7132.02796	Adj R-Sq	0.3030
C.V.	386.14565		

Parameter Estimates

Variable	DF	Parameter Estimate	Standard Error	T for HO: Parameter=0	Prob > |T|
INTERCEP	1	4926.748317	164.50234299	29.949	0.0001
TAXES	1	0.200026	0.01467567	13.630	0.0001

Each child receiving special education and related services was weighted 2.3;[36] Limited English Speaking students were weighted 1.2;[37] and compensatory education students who were receiving free and reduced price lunches, were weighted 1.2.[38] For each of the two analyses, findings are reported for all school districts, and for K-12 districts only.[39] The data computed univariate statistics that were adjusted for the number of students rather than districts, as is suggested by research and best practice. Measures of funding changes for all pupils were reported in nominal dollars, which accounts for some legitimate variation related to inflationary changes over time. Data are reported for all districts.

Analysis of Per Pupil Funding--Unweighted Pupils. Findings of the fiscal equity analysis are shown in Tables 5 and 6 and Figure 1. They compare funding in 1991-92 to funding in 1997-98 for all school districts and for K-12 school districts only.

The findings present a mixed message related to equity in Wisconsin school finance. For all districts in 1997-98, the data indicated reduced equity based on the range, range ratio, and the Atkinson Index. Other measures indicated a slight improvement in equity over time. As indicated in Table 5, in 1991-92 the range in revenue between the highest and lowest spending districts was $5,531; there was two and four-fifths more revenue in some districts than in others. In 1997-98 there were differences of $10,454 per pupil between high and low spending districts within the state--or over $300,000 for every classroom of 30 students. The range ratio indicated that there was over seven and one-half times more funding available to students in wealthy districts than students in poor districts.

However, the restricted range, the difference between the district spending at the 95th percentile versus the 5th percentile, fell. The restricted range ratio was 1.43 in 1991-92 but 1.34 in 1998-99, suggesting a narrowing of the gap in spending when very high and very low spending districts were not taken into consideration.

The coefficient of variation (COV), for 19991-92 was .12; it was .11 in 1998-99 indicating that two-thirds of all pupils were within 11% of the average per pupil revenue amount of about $6,100 per pupil, and about nine-tenths were within 20% of the average. The Gini Coefficient and Theil Index showed similar results: funding for all pupils was slightly more equitable in 1997-98 than in 1991-92. The Verstegen Index, which measures equity the upper portion of the revenue distribution (above the median), was 1.11 for all pupils in 1998-99; it was 1.12 in 1991-92. The McLoone index, which measures equity for the lower portion of the revenue distribution, was .96 in 1997-98; a slight improvement from 1991-92, when it was .96--but the Atkinson Index, also measuring equity for the lower portion of the distribution indicated movement away from equity over time. Because 1.0 indicates spending at the median for the Verstegen and McLoone Indices, these data indicate most of the dispersion in revenues in 1998-99 was located above the median, as the Verstegen Index was 11 points above 1.0, but the McLoone Index was only 4 points below 1.0. Thus, while districts below the median are rather tightly clustered; those above the median are more widely dispersed in terms of revenues.

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Table 5. Equity Statistics for Wisconsin School Finance, 1991-92 and 1997-98: Regular Education (Debt Service Included). a/

Measure	WISCONSIN EDUCATION FINANCE			
	All Districts		K-12 Districts	
	1992-92	1997-98	1991-92	1997-98
Range	$5.531	$10.527	$4.263	$8.104
Top	$8.501	$12.037	$7.233	$9.413
Bottom	$2.970	$ 1.582	$2.970	$4.603
Range Ratio	2.86	$ 7.61	1.70	2.04
Restricted Range	$1.658	$ 1.870	$1.489	$1.795
95%	$5.571	$ 7.313	$5.424	$7.215
5%	$3.912	$ 5.443	$3.935	$5.419
Restricted Range Ratio	1.43	1.344	1.38	1.33
Federal Range Ratio	0.4240	0.3436	0.3786	0.3312
Mean	4.607	6.133	4.585	6.093
Coefficient of Variation	0.1185	0.1098	0.1078	0.9432
Gini Index	0.0615	0.0538	0.0578	0.0493
Theil Index	0.0067	0.0057	0.0057	0.0043
Atkinson's Index				
I8	0.9610	0.4444	0.9646	0.4450
I10	0.9502	0.3343	0.9543	0.3350
McLoone Index	0.9379	0.9571	0.9400	0.9565
Verstegen Index	1.1125	1.1050	1.1050	1.0924

a/ For 1991-92: General Fund, Debt Sevice Fund, State Transportation, and State Exceptional Education Minus State & Local Transportation and State & local Exceptional Education Expenditures. Norris excluded due to data anomalies. As Norris was the lowest expenditure district, it is probable that the above weighted disparity measures underestimate inequalities between districts. For 1997-98: Equalization aid, categorical aid, and property tax levy minus transportation and special education. Norris excluded. N = 792,475 for all districts; N = 791,864 for K-12 districts (1991-92). N = 859,832 for all districts; N = 828,036 for K-12 districts (1997-98).

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Wisconsin School Finance: Revenue Deciles, 1997-98

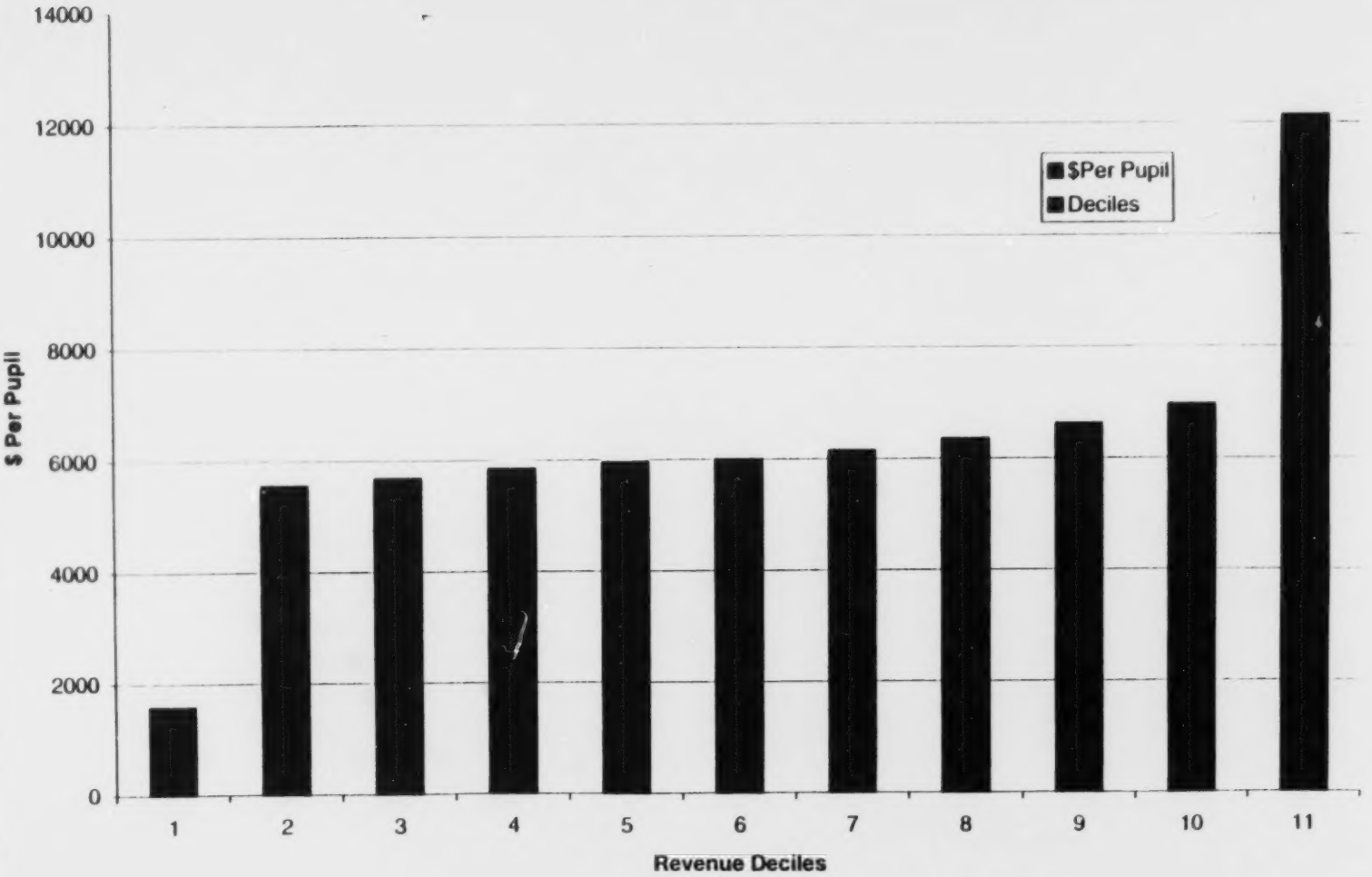

Table 6. A Comparison of Revenue Deciles For All Districts & K-12 Districts for Wisconsin School Finance, 1991-92 and 1997-98: Regular Education (Debt Service Included). a/

	WISCONSIN EDUCATION FINANCE (ADM)			
	All Districts		K-12 Districts	
Pupil Decile	1991-92	1997-98	1991-92	1997-98
0%	$2,970	$1,582	$2,970	$4,602
10	4,094	5,544	4,104	5,561
20	--b/	5,659	--b/	5,670
30	4,260	5,812	4,260	5,820
40	4,386	5,907	4,369	5,927
50	4,494	5,948	4,485	5,948
60	4,641	6,086	4,617	6,076
70	4,754	6,286	4,741	6,264
80	4,994	6,544	4,974	6,470
90	5,244	6,869	5,180	6,799
100	8,501	12,036	7,232	9,413

a/ For 1991-92: General Fund, Debt Sevice Fund, State Transportation, and State Exceptional Education Minus State & Local Transportation and State & local Exceptional Education Expenditures. Norris excluded due to data anomalies. As Norris was the lowest expenditure district, it is probable that the above weighted disparity measures underestimate inequalities between districts. For 1997-98: Equalization aid, categorical aid, and property tax levy minus transportation and special education. Norris excluded. N = 792,475 for all districts; N = 791,864 for K-12 districts (1991-92).N = 859,832 for all districts; N = 828,036 for K-12 districts (1997-98). b/ For 1991-92: Milwaukee spanned percentiles from 19% to 31%, thus there was no observation for the 20%. For 1997-98, Milwaukee spanned percentiles from 43% to 56%.

Table 6 shows cross-time revenue deciles for all districts and K-12 districts. As shown, the spread of the distribution increased over time at all levels. Interestingly, the variation in funding almost doubled between the 90th and top decile, in 1997-98. The data for 1997-98 are graphically depicted in Figure 1, which illustrates funding per pupil across Wisconsin for each decile grouping.

Equity Analysis of Weighted Per Pupil Funding. Findings of the fiscal equity analysis are shown on Tables 7 and 8 for unweighted (ADM) and weighted (WADM) pupils for all school districts and for K-12 districts only, for 1997-98. The weighted pupil analysis

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incorporates vertical and horizontal equity considerations, or the notion that people in similar circumstances should be treated similarly (horizontal equity) but individuals can be treated differently based on relevant and justifiable differences (vertical equity).[40]

In school finance this means that the goal is not absolute equality in spending among districts; but fairness in the distribution of revenues (expenditures). Vertical equity permits more to be spent on some students (districts) if their needs are greater and entail higher costs. By weighting students (districts), vertical and horizontal equity analyses occur simultaneously; this is the preferred method of comparison.

Table 7 shows statistics for ADM and WADM in 1997-98. A more *in*equitable aid distribution was found when the excess costs for students with special needs (WADM) were taken into consideration. For example, the range ratio for weighted students was 8.24; for unweight students it was 7.61. Thus, when the costs of special students were considered, some districts had over eight times more to spend than others. Likewise, the coefficient of variation was .13 for weighted pupils, compared to .11 for unweighted pupils--thus, the disparity is larger when weighted pupils were considered. The Gini Index, Theil Index and Verstegen Index also show less equity when weighted pupils were taken into consideration. The Gini Index was .05 for ADM but .06 for WADM; the Theil Index was .0056 for ADM but .0081 for WADM. The Verstegen Index was 1.11 for ADM but 1.13 for WADM.

Measures for the lower portion of the distribution were mixed. The McLoone showed less equity for WADM; the Atkinson Index showed more--but this miniscule. This indicates that when the costs of special needs students were considered, the relative position of poor districts deteriorate because special needs students were a larger proportion of the population. This assumption was borne out to some extent. Table 8 shows revenue deciles for weighted (WADM) and unweighted (ADM) pupils. All values were depressed when the high costs of special needs students were considered (WADM). A difference of 21% between funding for unweighted versus weighted students was found at the 20th percentile signifying the largest concentrations of special needs students were located there. Other differences in values between ADM and WADM ranged from 17% (lowest percentile) to 19% (40th percentile), except at the top of the distribution where differences were 16% and 10% for the 90th and 100th percentile, respectively. Thus, special needs students were spread throughout the revenue distribution, but the largest proportions, and therefore highest costs, are located at the bottom of the distribution.

Overall, these findings raise questions over whether the state aid system is "as nearly as uniform as practicable" and provides equal educational opportunities to all children and at all schools. They also raise questions over how the system might be restructured to provide greater equity--for both children and taxpayers while meeting the needs of all children--rich and poor, rural and urban, special needs and those in general education programs.

Table 7. Equity Statistics for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included). a/

	WISCONSIN EDUCATION FINANCE			
	All Districts		K-12 Districts	
MEASURE	1997-98 (ADM)	1997-98 (WADM)	1997-98 (ADM)	1997-98 (WADM)
Range	$10,454	$ 9,497	$4,811	$4,747
Top	$12,037	$10,807	$9,413	$8,093
Bottom	$1,582	$ 1,310	$4,603	$3,345
Range Ratio	7.61	8.25	2.04	2.42
Restricted Range	$1,870	$ 1,707	$1,795	$1,652
95%	$7,313	$ 6,148	$7,215	$6,088
5%	$5,443	$ 4,441	$5,419	$4,436
Restricted Range Ratio	3.91	1.38	1.33	1.37
Federal Range Ratio	0.3436	0.3845	0.3313	0.3723
Mean	$6,134	$5,018	$6,094	$4,976
Coefficient of Variation	0.1095	0.1321	0.9360	0.1146
Gini Index	0.0537	0.0654	0.0492	0.0602
Theil Index	0.0056	0.0081	0.0043	0.0063
Atkinson's Index				
I8	0.8658	0.8677	0.9757	0.9657
I10	0.7113	0.7188	0.9699	0.9575
McLoone Index	0.9573	0.9388	0.9567	0.9395
Verstegen Index	1.1050	1.1269	1.0923	1.1141

For 1997-98: Equalization aid, Categorical aid, and Property Tax Levy Minus, Transportation and Special Education; WADM. Norris excluded due to data anomalies. N = 859,832 pupils for all districts; N = 828,036 for K-12 districts. ADM=average daily membership. WADM=weighted average daily membership.

CURRENT SCHOOL FINANCE LITIGATION
VINCENT V. VOIGHT[41]

Issues related to equity for students and taxpayers feature prominently into a current challenge to the Wisconsin finance system. A decade after *Kukor*, this new challenge has been brought on behalf of poor school districts and others and is awaiting review by the Wisconsin Supreme Court. It is discussed below.

Table 8. A Comparison of Revenue Deciles For All Districts & K-12 Districts for Wisconsin School Finance, 1997-98: Regular Education (Debt Service Included). a/

	WISCONSIN EDUCATION FINANCE			
	All Districts		K-12 Districts	
PUPIL DECILE	1997-98 (ADM)	1997-98 (WADM)	1997-98 (ADM)	1997-98 (WADM)
0%	$1,582	$1,310	$4,603	$3,345
10	5,544	--b/	5,544	--b/
20	5,655	4,479	5,655	4,477
30	5,812	4,591	5,806	4,587
40	5,907	4,765	5,907	4,750
50	5,948	4,858	--b/	4,846
60	6,092	5,027	6,076	5,001
70	6,286	5,180	6,264	5,155
80	6,544	5,383	6,470	5,383
90	6,869	5,750	6,799	5,716
100	12,037	10,806	9,413	8,092

a/ Norris excluded due to data anomalies both years. For 1997-98: General Aid, Categorical Aid, and Property Tax Levy Minus Transportation and Special Education. N = 828,036 for K-12 districts (1997-98).
b/ For 1997-98, WADM, Milwaukee spanned percentiles from 4.9% to 17.9%. For ADM, 43% to 55%.

CIRCUIT COURT DECISION

One hundred and eighty-one plaintiffs brought the case, *Vincent v. Voight*,[42] including school districts, parents, students and taxpayers. Intervening plaintiffs consist of the Wisconsin Education Association, teachers, and school administrators from school districts across the state. The defendants are the State Treasurer, the State Superintendent of Public Instruction, the Department of Public Instruction, the Secretary of the Department of Revenue, and the Department of Revenue. The facts of the case are undisputed.

Plaintiffs and intervening plaintiffs claim--that the system was unconstitutional under the education article and the equal protection clauses of Wisconsin Constitution and U.S. Constitution--were denied in lower court action because "the school funding plan is constitutional under *Kukor v. Grover* which was controlling in this case.[43]

Plaintiffs alleged that districts that spent more per pupil were able to provide their students with more opportunities in a variety of areas, and that students in less wealthy districts did not have equal educational opportunities. They stated that,

> ...many districts have eliminated or reduced advanced foreign language, science and math classes, advanced placement classes, gifted and talented classes, and elective classes. Some school districts are unable to keep up with text-book replacement[44]

The plaintiffs explicitly noted that "small, remote" districts were negatively affected by the state aid system. Although "distance learning enabled small, remote school districts to provide their students with opportunities for broader course offerings"....some of the districts that could benefit had only non-interactive distance learning or "no distance learning at all".[45] Moreover, plaintiff districts were forced to eliminate teaching positions, not replacing retiring teachers, and increasing class sizes and an inadequate number of counselors. An inability to raise funds under the finance system resulted in increased class sizes and:

> ...classes are sometimes being taught in partially condemned buildings, house trailers, basements storage rooms, hallways, auditorium stages, unused shower facilities, elevator shafts, and janitor's closets. Some buildings do not meet the Americans With Disabilities Act requirements for handicapped accessibility. Maintenance is being delayed on many buildings resulting in leaking roofs, unsafe ventilation systems, antiquated heating and cooling systems, inadequate lighting and water running through the walls.[46]

All sides moved for summary judgement; all agreed that education was a fundamental right in Wisconsin. The problem, the court noted, was that "courts have not offered clear guidance as to what that right entails and how it is to be achieved."[47]

According to the lower court, the plaintiffs mistakenly framed the issue as whether the state distributes its school money in a manner that disequalizes local budgets rather than whether children are being denied an education. This, the court said, means that plaintiffs have challenged legislative acts, with their presumptive validity, and makes the court reluctant to interfere. Thus,

> courts will bend over backwards to avoid having to declare a statute unconstitutional. Courts will avoid the issue altogether if possible...when forced to confront the issue, courts will stack the deck against the challenger of the statute...[this] reluctance invalidate legislative acts is compounded when the challenge is to the taxing or spending laws, with all of their accompanying political compromises.[48]

Although plaintiffs contended that the finance scheme was unconstitutional because it "fails to equalize the tax burden of the various school districts, and less wealthy or

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property poor districts are required to make a more burdensome tax effort than property rich districts for the same expenditure per pupil, the court found the plaintiffs case was wanting. This was so because the education article "at one level...tolerates a great deal of disparity of tax effort among school districts."[49] However, the court pointed out:

> ...it is stating the obvious to say that the situation confronting the framers was different from that which exists today....the issues presented here...required the court to be faithful to both the language and intent of a document which neither directly speaks to nor anticipates conditions which exist 150 years later. It comes as no surprise that the Supreme court was highly divided [in *Kukor*] in its efforts to apply the provisions of Article X to modern school finance schemes. [50]

The lower court agreed with the majority in *Kukor* that "so long as there is no fundamental failure in the ability of the districts to provide their children with a basic education...the school finance scheme is sound."[51] It pointed out that the dissent's definition of a "sufficient" basic education did not provide guidance in "how to define" it, creating a risk that "purely subjective standards" would be used. The plurality defined a basic education as one that complied with legislatively required minimum standards, such as minimum school days and teacher certification.[52] The court noted that the dissents' test was qualitative; the plurality, quantitative; but these were not "irreconcilable."[53]

Plaintiffs in *Vincent* asserted that the basic education standards cited by the plurality in *Kukor* were the "bare minimum", and wealthier districts could provide much more. However, the lower court said, "in the absence of any effort by the parties" to show these were inadequate, it "felt" bound by *Kukor* thus disposing of the challenge to the education article.

As related to equal protection arguments, the lower court said they were "largely redundant" to rights provided under the education article. It pointed out that the fundamental flaw in plaintiffs arguments provided "very little statistical evidence (and very little of any kind of evidence apart from anecdotes and conclusory opinions) on the crucial question of whether children are actually being deprived of a basic education."[54] In a strongly worded statement the Court baldly stated:

> The Court cannot provide Plaintiffs with the drastic remedy they seek--the sacking of the State's entire system of financing schools throughout the State on such an unevenly developed record.[55]

The lower court elaborated at length, stating that the plaintiffs case did not provide an overview of "how much money goes to which districts--it only made comparisons of the richest and poorest districts." As with "a curved mirror, Plaintiffs have presented the Court only with a view of the distorted edges."[56] The court noted that even using this evidence was not useful, because it showed that poorer districts received more equalization aid than nonpoor districts, the system was highly progressive, and at all levels provided more funding than was available to districts in the Kukor challenge. The

analysis changed little when categorical aid was factored in--but here, plaintiffs and intervening plaintiffs were at odds. Plaintiffs criticized the use of categorical aids as disequalizing. Intervening plaintiffs criticized the legislature's turning away from categorical aid. Moreover, these funds, including integration aid, only make up 12.7% of all state aids; although they have decreased as a percentage amount, in dollar terms they have increased. Categorical aids cited in the complaint--integration aid, the levy credit, revenue limits, special adjustment aid-- were sustained by the court.

The final question entertained by the court was whether the plaintiffs could establish that basic education resulted in unacceptable disparity, with special education diverting funds from regular education. The court said that the plaintiffs case was weaker than that provided in *Kukor*, when the system was upheld. Moreover, there was no evidence of the impact of disparity on children in schools. The court said helpful analysis, considered "crucial" would have included:

> ...rates at which high school graduates go to college, dropout rates, the percentages of children requiring remedial education, comparison of the wages of those who do not go to college, comparison of standardized test scores such as the college entrance exams or standardized test scores in the lower grades, audits and like evidence.[57]

The court called for "objective guidance" in defining a basic education stating "it must be something more than 'we know its bad when we see it'" and admonished plaintiffs that:

> This Court...cannot take the drastic step of nullifying the State's entire scheme of paying for education in the absence of a systematic analysis which identifies the nature and scope of the problem and the State's finance scheme, and which provides a framework for the steps which the legislature must, and realistically can, take to rectify the problem. That evidence has not been presented here.[58]

Plaintiffs have undertaken no effort, the court said, to differentiate between the basic education required under the education clause and the additional educational opportunities localities may provide under that same article--but,

> ...the court cannot evaluate equal opportunities against some greatest common denominator standard... The laws clearly does not require that the State provide for the opportunities some localities have elected for their children in areas like college level classes, electives, extracurricular activities and computer education. Yet it also seems that in light of ever growing technological demands on the work force, an equal opportunity in education ought to require that at least some of these be available to students. Plaintiffs have not given the Court the tools to draw the line.[59]

Interestingly, the court said that "even if institutional constraints could be overlooked and the court were willing to suspend deference to the legislature on budgetary authority," plaintiffs did not provide enough guidance. "*What Plaintiffs are really trying to establish is that the legislature does not give some local districts enough money to provide for an adequate education*, but they have drawn attention to no evidence as to what an adequate education is or how much it costs."[60] The Court acknowledged the "grave" pressures faced by school districts today:

> ...the diseconomies of scale faced by smaller and shrinking districts, the high concentration of high needs students in inner cities. The court does not doubt that these problems have a serious adverse impact on the education received by many of Wisconsin's children.[61]

In conclusion, the court pointed to the many benefits that were derived from an educated citizenry--and the "stake we all have in the State's education system;" and the lack of a meaningful standard by which it could evaluate equal opportunities, calling on the Supreme court to enunciate one.[62]

COURT OF APPEALS DECISION

The lower court ruling in *Vincent v. Voight* was appealed to the Wisconsin Appeals Court; and on December 21, 1998 a decision was released that affirmed the lower court's holding.[63] The Court of Appeals said that to reach a conclusion that contradicted *Kukor* the plaintiffs must demonstrate that the system materially differs from the finance system that existed in *Kukor*-- but they had not done so.

The Court reviewed the record in the case and the system of funding education in Wisconsin; then discussed precedent under *Buse v. Smith*[64] and *Kukor*. *Buse*, the case that struck down negative aid provisions in Wisconsin, established that absolute uniformity was not required, and a minimum level of schooling was required. *Kukor* plaintiffs argued the system did not take into account the fact that some children had differing educational needs requiring certain districts to provide greater financial resources to provide them the same level of education; and that those districts with greater needs had lower ability to raise education funds. The majority agreed that the system did not violate the constitution but "could not agree why",[65] the Appeals Court said.

The lower court record was reviewed including its holding that it was bound by *Kukor*, and that the statistical record did not provide the evidence necessary to prove that the current system created greater disparities among lower and higher property value districts than existed at the time of *Kukor*.

Plaintiffs asserted, on appeal, that the finance system was different than what existed in *Kukor* and there was no clear majority opinion in *Kukor* so it was not controlling. They asked for a different result based on these assertions.

The Court of Appeals first determined the weight that should be given to *Kukor* but found that a majority did prevail, given that the three-Justice plurality opinion was joined by a single justice who also concurred on three major points while rejecting the plurality's local control justification. First, absent a showing that the legislature unconstitutionally denied a uniform opportunity for education or treated students unequally, the court should defer to the legislature. Second, they agreed that education was a fundamental right, but plaintiffs did not assert they were being denied that right. Third, they stated that the uniformity clause did not require the legislature to maintain absolute uniformity.

The Court of Appeals concluded that 1) Article X, section 3, requiring the Wisconsin state aid system to be "as nearly as uniform as practicable" did not require absolute uniformity, 2) the legislature was entitled to great deference when determining what degree of uniformity is "practicable", and 3) equal access to education is a fundamental right but equal access to allocation of resources was not. Finally, it said that the proper standard of review was not strict scrutiny and that the Court of Appeals was prohibited from reaching a different conclusion than the supreme court in *Kukor*.

The Appeals Court pointed out that for plaintiffs to prevail they must establish that the system differed materially from the finance plan reviewed in *Kukor*. Plaintiffs, in turn, alleged that differences were made in the funding system through a first tier hold harmless provision, in the categorical grant system, in the school tax levy credit system, and in the implementation of revenue limits.

Although the plaintiffs argued that the first tier was disequalizing because it maintained or widened the gap by providing equalization aid to districts spending well above the state average, the Court of Appeals found that the plaintiffs failed to show that the resulting disparities were substantially greater than the disparities that existed in *Kukor* and the evidence provided did not establish this fact either. The plaintiff's assertion that categorical aid was disequalizing, has fallen as a percent of funding, and disadvantaged poor districts who have meager ability to provide local funds, the Court of Appeals said, failed to show that the system was distributed on a basis that favored wealthy districts; categorical aid was a small portion of overall funding and the actual dollar amount has increased. This reasoning was also applied to special adjustment aid--no evidence was provided that it contributed to the denial of equal opportunities in education. Levy credits, by the plaintiffs own assertion, was not viewed as state funding for schools.

Finally, revenue limits, introduced in 1993, were challenged by plaintiffs because most school system costs were fixed regardless of the size of the student population. When a "struggling district loses students, it has less money available to pay for those fixed costs, and they generally must cut programs in order to pay for them."[66] Revenue limits also provided difficulties for poor districts when they had an influx of special needs students, who required state and federally mandated programs. The resources needed were quite expensive and struggling districts needed to cut other programs and services to comply with the mandates. Further, plaintiffs asserted that the revenue limits perpetuated disparities, by limiting spending.

The Court of Appeals found that the plaintiffs failed to present evidence that the revenue limits resulted in substantial spending disparities or that certain children were denied a basic education. Plaintiffs have not presented "objective" proof of how poor districts were impacted by low spending, other than testimonials, affidavits and the like.

Thus, the Appeals Court concluded, decisions on how to distribute state aid are left to the legislature and state supreme court. After *Kukor*, the Court of Appeals said, it was "limited to determining whether the system allows children access to a basic education."[67] However, "plaintiffs have provided no comparative evidence that the system denies children access any more than it did when that case was decided." In fact, the "evidence suggests that the state is providing greater aid to school districts than it did at the time *Kukor* was decided."[68] Unless evidence could show that greater disparities exist under the current system, and that some children were denied a basic education, the Court of Appeals said it had "no choice" but to affirm the lower court's decision, upholding the Wisconsin school finance system.

DISCUSSION

The impact of school finance litigation on children in the State of Wisconsin--including children in rural and small schools and districts--is not yet definitive due to the ongoing challenge to state school finance system that is awaiting review by the high court. Many of the plaintiff school districts are composed of rural and small school districts from across Wisconsin. The plaintiffs allege that the finance system fails to provide equal opportunities to all children, and that there are substantial funding disparities among districts indicating the plan is not as "nearly as uniform as practicable."

The highly divided Wisconsin Supreme Court previously upheld the finance system in *Kukor* (1989) despite the educational overburdens imposed on many districts because of the high costs associated with children with special educational needs that required higher costs for programs and services to reach a basic standard. Thus, the Court noted that the constitution did not require funding for special needs children, but failed to address the fact that the costs associated with special needs children were encroaching on regular education programs and services, because programs to address these needs (such as special education, and limited English speaking) were mandatory. This means that education programs for general education students were conditioned on the size of the population of special needs students--an irrational factor that erodes the equity of the overall finance system for all children. Although the court usually deferred to the legislature on matters of funding, it took the opportunity to point out that more revenue was needed for poor districts.

The supreme court in *Kukor* said that the state must provide only a basic education to all children to meet the constitutional command. A basic education was defined as a minimum educational program, including a minimum number of days children attended schools and minimum teacher certification requirements. Thus, the high court appeared to

be invoking an age-old minimalist standard of educational adequacy set in the sole U.S. Supreme Court case on education finance equity, *Rodriguez*, decided nearly a quarter of a century ago: that because all students had access to a minimum, basic education, the finance system was not constitutionally infirm despite disparities in educational quality and equality. That significant changes have occurred in society and the economy over the past quarter century appears unacknowledged. However, the *Kukor* court left the door open to another challenge should this standard be violated stating: "Our deference would abruptly cease should the legislature determine that it was 'impracticable' to provide to each student a right to attend a public school at which a basic education could be obtained, or if funds were discriminatorily disbursed and there was no rational basis for such a finance system."[69]

The dissent found that the issue *Kukor* was not "spending disparities" but whether the state, through its finance system, met its constitutional obligation to provide an equal educational opportunity for all children within the state, "rich and poor alike." According to the dissent: "it has not". The "fundamental flaw" in the system, the dissent said, was "dollars without regard to educational needs." The result, it said, was: "a significant number of school children in this state are denied an equal opportunity to become educated people."[70] The mandate of Article X, section 3, Wisconsin Constitution, it stated:

> is that the state provide a character of instruction in the state schools such that all children are provided with a uniform opportunity to become equipped for their future roles as citizens, participants in the political system, and competitors both economically and intellectually.[71]

Have conditions improved for rural and small districts since the 1989 supreme court ruling in *Kukor*? Reactions from interviewees were mixed. According to a superintendent, who expressed the sentiment of other rural and small school district officials: "No...in my opinion, things have gotten worse. There is more of an imbalance since *Kukor*." Another observer explained: "*Kukor* is being interpreted to mean absent a complete denial of education then the system is ok." Also, an interviewee pointed out, there were some basic problems with the current formula, mainly the assumptions that "all kids cost the same to educate, and the revenue controls that assume a static student base." However, a finance expert opined: "it's better now-more money is flowing. The state provides two-thirds of costs and most of it is general aid."

The Wisconsin State Aid System for funding primary and secondary education challenged in *Kukor* is a Guaranteed Tax Base System that aims to provide equal funding for equal tax rates. However, several components of the system worked against this goal, including changes made to the system in 1995 after the Supreme Court handed down its opinion. These included: the new first tier of the system, a movement away from categorical aid further eroding limited funds for special needs students, and the combined effects of this underfunding when considered in tandem with recently implemented revenue limits. Because school districts had a limited number of students, when enrollment changes occurred or new special needs students were added, limitations on

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funding increases and underfunded categorical operated to disadvantage these districts. According to one school district official: the "[underfunded] categorical draw down regular education funding". Another pointed out that, "we don't have any money for the normal kids. The average student is losing, falling by the wayside, because we're frozen [with revenue limits]. The mandated [programs such as special education and limited English Speaking] get the money and the others get lost. The revenue limits keep us from raising money. That is the problem."

Data analysis undertaken for this study, revealed that there are large disparities between the highest and lowest spending districts in Wisconsin, although the shape of the system was quite flat for districts from the 20th percentile in funding to the 90th percentile. However, when weighted pupils were incorporated into analysis to represent the high costs of special needs students, movement away from equity was apparent for all children. Moreover, a regression analysis showed that there was little relationship between tax rates and spending in Wisconsin (r^2=.30). These data, (discussed more fully in the body of the paper) raise serious questions about the equity of the system, particularly for poor, rural and small schools and districts.

An example illustrates these issues. In 1997-98, Bowler, a small poor school district, taxed twice what Gibraltor did, yet total expenditures from state and local sources were only 70% of Gibraltor's expenditures. This difference could not be accounted for by differences in special education funding. The difference amounts to over $1.5 million per year or an advantage for Gibraltor of $2,562 per pupil. These are nontrivial differences and suggest the finance plan is not "as nearly as uniform as practicable" as mandated under the Wisconsin Constitution.

Similar equity issues are raised in the active court case on school finance equity, awaiting review by the Wisconsin Supreme Court, *Vincent v. Voight*. Thus, almost ten years after *Kukor*, another challenge to the constitutionality of the state aid system is moving through the judicial system. Both the Circuit Court and the Court of Appeals have upheld the current Wisconsin School Aids system, pointing out that Kukor was controlling unless plaintiffs could show that the finance system had changed in the interim; that children were being denied an equal educational opportunity; and that disparities were greater under the current system than under Kukor.

Plaintiffs spoke of the difficulties small districts faced under the current finance system, to wit: when a "struggling district loses students, it has less money available to pay for those fixed costs, and they generally must cut programs in order to pay for them."[72] Likewise, the lower court in *Vincent* specifically spoke to the difficulties faced by small school districts because of "diseconomies of scale" and noted that social, economic and demographic conditions had changed vastly since the constitutional framers debated the needs and requirements for financing education in the State of Wisconsin. Nonetheless, the lower court admonished plaintiffs, and asked for "objective" evidence rather than anecdotes, and a clear showing that spending disparities resulted in unequal educational opportunities for children in schools and in classrooms. The lower court asked how to measure equity and adequacy in the system if not by the minimum education standards

established by the state and cited in Kukor. The lower court pointed out that absent a compelling justification, there was no choice but to uphold the system. The Court of Appeals agreed with this rationale, calling on the Supreme court to determine what constituted an equal educational opportunity.

Thus, for rural and small districts to prevail, it appears that what is needed is a clear showing of disparities in education spending that impact children in schools and in classrooms; a showing that opportunities for these children infringe on their ability to be "citizens and competitors" in the labor market in the 21st century; and a showing that the current finance system is inadequate and structures inequality under the law.

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REFERENCES

1. Wisconsin Constitution, Article X, Section 3, emphasis added.

2. *See*, Rossmiller, R. A. (September 1990). "As Nearly As Uniform As Practicable"?: A Historical Review of Wisconsin's Equalized Aid Formula. Madison, Wisconsin: Wisconsin Association of School District Administrators. pp. 1 ff.

3. Vincent v. Voight, (date). Memorandum Decision and Order (Summary Judgement). Case No. 95-CV-2586, Trial Court. Vincent v. Voight. Court of Appeals Decision, Dated and Filed December 21, 1998, No. 97-3174. Note: Appeals Opinion is Subject to Further Editing.

4. Kukor v. Grover, 436 N.W.2d 568 (Wisc. 1989).

5. Approximately ten individuals were interviewed, including school district officials, policymakers and staff, academics, and individuals from Wisconsin's Department of Public Instruction.

6. Fieldwork was completed in July 1999 on site.

7. Kukor v. Grover, 436 N.W.2d 568 (Wisc. 1989).

8. Id. at 569.

9. Wisconsin Statutes, section 121.02, defining minimum state standards.

10. Kukor 148 Wis. 2d at 522.

11. Kukor, 148 Wis. 2d at 509-10.

12. 148 Wis. 2d at 483 n.8, cited in Vincent v. Voight, at 16.

13. Id., at 577.

14. Kukor, at 585.

15. Kukor, at 587.

16. Kukor, Id. at 587.

17. Id., at 587-88.

18. Kukor, Id., at 588.

19. Kukor, Id., at 590.

20. Data are taken from: National Education Association (1998). Estimates of School Statistics. New Haven, CN: NEA Library. U.S. Census Bureau (1999). Model-Based

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21. Department of Public Instruction (1999). Basic Facts: About Wisconsin Elementary and Secondary Schools. Madison, WI: DPI.

22. For a discussion see: Wisconsin Legislative Fiscal Bureau (January 1999). Informational Paper #27. Elementary and Secondary School Aids. Madison, WI: Wisconsin State Capital. Busch, C., Kucharz, KI., and Odden, A. (1997). Wisconsin Public Education and Property Tax Relief in the 90's. Educational Considerations. vol. 25, no. 1, 52-58.

23. For example, if District X has a tax base of $800,000 per pupil or 40% of the primary state guaranteed tax base ($2 billion), the state will assume the remaining 60% of the district's per pupil expenditure, up to $1000 per pupil. The equalization formula is as follows:

$$\text{State Aid} = 1 - \frac{\text{Equalized Valuation Per Member}}{\text{State Guarantee}} \times [\text{Shared Cost}]$$

24. See: Verstegen, D. A. (1990). School Finance at a Glance. Denver, CO: Education Commission of the States. Gold, S., Smith, D. & Lawton, S. eds., (1995). Public School Finance Programs of the United States and Canada 1993-94. Volume I. American Education Finance Association and Center for the Study of the States, State University of the States. Verstegen, D. A. (1993). Restructuring School Finance: A Time for Action. Paper Presented at the American Education Finance Association's Annual Conference. Albuquerque, New Mexico.

25. See, for example: Rossmiller, "As Nearly As Uniform"; Odden, A., Busch, C. and Hertert, L., (Winter 1996). The Intricacies of Reforming School Finance and Providing Property Tax Relief in Wisconsin, Journal of Education Finance, 21, 321-342; Reschovsky, A. (1995). The Two-Thirds Initiative: A Reform Opportunity Lost? La Follette Issues. Madison, WI: University of Wisconsin, Robert La Follette Institute of Public Affairs; Wisconsin Department of Public Instruction (1999). Basic Facts About Wisconsin's Elementary and Secondary School Schools. Madison, WI: Department of Public Instruction.

26. Department of Public Instruction, "Basic Facts", p. 153.

27. Mueller, J., State Auditor (May 1999). An Evaluation: Special Education Funding. (A Report to the Joint Legislative Audit Committee Members-Letter of Transmittal). Madison, WI: Wisconsin State Capitol.

28. Joint Legislative Audit and Review Committee, p. 3 ff.

29. Mueller, J. (State Auditor). (May 1999). An Evaluation: Special Education Funding. Report to the 1999-2000 Joint Legislative Audit Committee Members. Madison, WI:

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Wisconsin State Capitol, Appendix III.

30. Wisconsin Legislative Fiscal Bureau (January 1999). Informational Paper #27: Elementary and Secondary School Aids. Wisconsin State Capitol, Legislative Fiscal Bureau, p.19.

31. See also, Joint Committee on Finance (May 20, 1999). Student Achievement Guarantee in Education (DPI--Categorical Aids) (Paper #778). Madison, WI: Wisconsin State Capitol.

32. See, for example, Blair, J. (January 27, 1999). "Wis. Districts Chafe Under State's Revenue Limits. Education Week., 1, 15.

33. Wisconsin Legislative Fiscal Bureau (January 1999). Local Government Expenditure and Revenue Limits. Madison, WI: Wisconsin State Capitol.

34. Data were collected from the Legislative Fiscal Bureau, Wisconsin State Capitol and cross-referenced to information from the Department of Public Instruction (1999). Basic Facts, 1997-98. Madison, WI: Department of Public Instruction.

35. Using this approach, "weights" are derived based on the ratio of excess costs to general program costs; they are driven off the cost of the general education program, which is the level of 1.00 in the system; and they are empirically derived. Thus, a child with special educational needs would be weighted based on research-based cost-differentials that establish the ratio of excess costs to special program costs. For example, a child enrolled in a program that costs half again as much as the general education program is weighted 1.5; another 50% in funding is required.

36. Chaikind, S., Danielson, L.C. and Baven, M. L. (1993). What Do We Know About the Costs of Special Education? A Selected Review. Journal of Special Education, 26(4), 344-370; Parrish, T. B. & Verstegen, D. A. (June 1994). Fiscal Provisions of the Individuals with Disabilities Education Act: Policy Issues and Alternatives. (Policy Paper Number 3). Palo Alto, CA: Center for Special Education Finance, American Institutes for Research. Parrish, T. B. & Verstegen, D. A. (1994). Fiscal Provisions of the Individuals With Disabilities Education Act: Policy Issues and Alternatives. Policy Paper Number 3. Palo Alto CA: American Institutes of Research, Special Education Finance Center.

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39. It should be noted that findings for all districts include Union High School Districts and

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K-8 Districts, which can confound results.

40. Bivariate statistics were not computed as K-8 and UHS districts do not have discreet property values which can confound results.

41. This section draws heavily on a brief prepared for Council for the Plaintiffs, March 1999, Jacksonville, FL.

42. Vincent, et al. v. Voight, et al. Circuit Court Branch 6, Dean County, Memorandum Decision and Order (Summary Judgement), Case No. 95-CV-2586, p. 1 (mimeo).

43. Vincent, et al. v. Voight, et al. Circuit Court Branch 6, Dane County, Memorandum Decision and Order (Summary Judgement), Case No. 95-CV-2586, p. 1 (mimeo).

44. Vincent at 7.

45. Id at 7.

46. Id at 8.

47. Id at 8.

48. Id, at 9.

49. Id at 13.

50. Id at 13.

51. Id at 21.

52. Id. at 22, ff., quoting Section 121.02 Wisc. Stats.

53. Id. at 23.

54. Id at 26.

55. Id, at 26.

56. Id, at 27.

57. Id, at 36.

58. Id at 37,

59. Id. at 38.

60. Id at 39.

61. Id at 39.

62. Id. at 40.

63. The decision was nonpublished thus not precedent setting.

64. Buse v. Smith, 74 Wis.2d 550, 247 N.W.2d 141 (1976).

65. Vincent et al. v. Voight et al., December 23, 1998, Court of Appeals Decision, No. 978-3174, State of Wisconsin. (Unpublished), at 17.

66. Id, at 32.

67. Id, at 33.

68. Id at 33.

69. Supra nt. 12, Kukor at 582.

70. Kukor, Id., at 588.

71. Kukor, Id., at 590.

72. Id, at 32.

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CHAPTER 4

SCHOOL FINANCE REFORM IN VERMONT: THE IMPACT ON SMALL AND RURAL SCHOOLS

Andrew Grider

This case study examines the background of Vermont's school funding prior to legislation and the impact of the legislation on the funding of small and rural school districts in the state. The first section describes the methodology used in the case study. The second section provides a profile of the State of Vermont from economic, demographic, and educational perspectives. The section also provides national comparisons with Vermont on a variety of indicators.

The third section examines the school funding system and the associated problems. A brief historical overview of the state funding system precedes an in-depth review of the foundation program prior to litigation and the inequities that it produced that ultimately led to the Vermont Lawsuit. The fourth section provides an analysis of the Court decisions. This section also provides descriptive information obtained through interviews that detail the inequities of the funding system experienced by small and rural schools.

The fifth section provides a description of the legislative struggles in the development and eventual implementation of the current state funding system. The effects of litigation via the new funding system are presented through the eyes of those persons interviewed and are supported through the literature. A detailed overview of the current funding program is also provided. The sixth section presents the future concerns and issues present in Vermont and discusses the impact of these conditions on school funding in Vermont.

METHODOLOGY

The objectives of the study were to investigate the circumstances surrounding state finance litigation and the resulting impact of state finance litigation on the funding of small and rural schools in the State of Vermont. Data collections occurred over a three-month period and included interviews, document collection, and collection of relevant literature.

Interviews. After a review of the literature, interviews were conducted with school district superintendents, academics, a state legislator, district school board members, officials in the Vermont Department of Education, state experts on rural affairs, and participants in the litigation process. To protect the identity of those participants interviewed, names and specific roles have been omitted.

A total of thirteen people were interviewed including six current superintendents. Of the remaining seven people that were interviewed, two work for the Vermont Department of Education, two are school board members, two are academics with expertise in rural affairs, and one state Senator. Appendix A describes more specifically the positions of those interviewed.

All but one of the participants were interviewed by telephone, and a semi-open interview format was used as a guide in developing an open-ended conversation. Appendix B provides the interview guide used for all interviews. Due to time and location constraints of a respondent, one participant replied to the interview questions via e-mail. All other interviews were tape recorded and transcribed.

Document Collection. Documents were collected from the state as part of the initial research. Additional documents were collected as needed. Articles from *Education Week* online as well as other online sources, including the Vermont Department of Education and the Center for Rural Studies at the University of Vermont, were used to augment data collection and analysis.

Data Analysis. Inductive analysis was used as the means for evaluating data consistent with the procedures developed for qualitative analysis by Patton (1990).[1] Interview transcripts were read and reread allowing themes to emerge. A case record was not established as observations were not included in the data collection process. Member checks were conducted with each of the participants and interview responses were cross checked with document analysis. Additionally, a nationally recognized education finance expert provided feedback and guidance throughout the data collection and analysis process.

A PROFILE OF VERMONT

Vermont is a unique state in terms of its demographic features. While it ranks 44th among U.S. states in land area with 9,249 square miles, the state ranks 49th in total population and averages 63.7 people per square mile.[2] According to the Census Bureau, in 1997 Vermont had a population of 585,000. However, this population fits into a statewide school system that has only 14 counties reporting to the state.

According to the U.S. Bureau of the Census, by the year 2000 Vermont's population is expected to increase to 617,000 people, ranking 49th among U.S. states. By 2025, the state is projected to be the 50th most populous with 678,000 people. Vermont is expected to gain 7,000 people by the year 2025 through net international migration, people coming to Vermont from other countries, with Vermont ranking 49th among all states and the District of Columbia. However, the state is expected to gain 26,000 people through net internal migration, people moving to Vermont from other states, with Vermont ranking 29th among all states and the District of Columbia.[3]

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The proportion of Vermont's population that is classified as elderly (65 and over) will increase from 12% in 1995 to 20.3% in 2025. As the elderly population increases however, the percentage of youth (under 20 years old) will decrease from 27.7% in 1995 to 23.9% in 2025. Nationally, Vermont ranks 36th in youth population in 1995 and is expected to rank 42rd in 2025.[4] Non-Hispanic Whites will comprise 95.6 % of the population by 2025, down from 97.9% in 1995. Non-Hispanic African Americans will increase from 0.4 % in 1995 to 0.6% in 2025. The Non-Hispanic Asians and Pacific Islander population will increase from 0.7 % in 1995 to 1.6 % in 2025. The Hispanic population will also increase from 0.7 % in 1995 to 1.8 % of the state's total population in 2025.[5]

ECONOMIC INDICATORS

Residents of Vermont have also experienced a slight increase in per capita income according to the Census Bureau. Based on information from the U.S. Bureau of the Census, from 1990 to 1997 per capita income increased (in constant 1992 dollars) from $19,073 to $20,764 moving closer to the national average of $22,713. Vermont ranked 24th in 1990, and 30th in 1997 in per capita income in the U.S.. Median household income actually decreased (in constant 1996 dollars) from $37,332 in 1990 to $32,378 in 1996. In 1990, Vermont ranked 16th in median household income with the national average of $35,945, and in 1996 fell to a rank of 36th with a national average of $35,492.[6] Unemployment rates have been relatively low as well with an employment/population ratio of 74% for males and 63%for females in 1996. The unemployment total has remained more or less constant over the years with figures of approximately 15,000 in 1990, 14,000 in 1995, and 15,000 in 1996.[7]

Vermont has a moderate rank compared to other states in terms of persons below the poverty level based on Census Bureau figures. In 1990, 10.9% of Vermont's population was below the poverty level, ranking 35th among all states and the District of Columbia. With a slight increase to 12.6%, Vermont rose in state comparisons in 1996 to 19th.[8]

With fairly strong economic indicators, the State of Vermont ranks moderately in its ability to tap economic resources based on *Rankings of the States* published by the National Education Association Table 1. In 1993-1994 state and local revenue generated $3,235 per capita, which ranked the state 26th among all states and the District of Columbia. Also, in 1993-1994, the state ranked 41st nationally based on revenue generated on sales per capita. In 1993-94 the state generated $1,033 per capita from state and local property tax, which ranked 7th among the states, and Vermont generated $428 per capita from individual income tax, which ranked nationally at 31st among the states and the District of Columbia.[9]

With a moderately high source of revenue from sales and property taxes, moderately high expenditures result. In 1993-94 the State of Vermont's state and local general expenditures per capita ranked 16th among all states and D.C. at $4,174 according to NEA's *Rankings of the States*. Based on per $1,000 of personal income in 1994,

Vermont ranked 14th among the states. In terms of expenditures for public education, state and local expenditures by major function for elementary and secondary education was one of the highest amounts spent by any state in the U.S., ranking 12th at $1,057 per capita. Expenditures for school finance per $1,000 of personal income in 1994-1995 resulted in a ranking of 4th in comparison to all states and D.C.. The state also registered near the top at $7,474 in per pupil expenditures giving the state a ranking of 8th for expenditures per pupil in ADA.[10]

Vermont is primarily a rural state with agriculture as its main industry. While there are some light industries around Burlington, the largest city, the tourism industry, particularly the ski resorts, are responsible for most of the state's economic growth. Areas with increased commercial and residential activities have also witnessed increased property values, and as a result, these communities have prospered. In more remote areas however, limited commercial activity has resulted in lower property values, requiring residents to bear heavy tax burdens. "The unequal distribution of economic and residential expansion has, over time resulted in unequal resources for public schools, creating tensions among communities affected at different ends of the property wealth continuum."[11]

VERMONT SCHOOL DISTRICTS

Vermont's 14 counties contain at total of 330 local education agencies that report to the State of Vermont. However, the State of Vermont has five different types of school districts: Town and City School Districts, Incorporated School Districts, Joint Contract Districts, Union School Districts, and Unified School Districts. The Town and City School Districts make up the "building block" for most of the other types of districts and are defined as "each Vermont town or city." There are 240 Vermont Town and City School Districts. Incorporated School Districts operate under a charter granted by the Legislature, however, this is an older tradition in Vermont as the last charter was granted in the early 1900's. There are 12 Incorporated School Districts in Vermont. There are two Joint Contract Districts in Vermont that consist or four towns that contract together to operate two schools. Each of the towns has its own school board. There are 35 Union schools in Vermont that are established when two or more school districts combine to own, operate, or construct schools. There is one Union School District that is an interstate district as it includes one Vermont town and one New Hampshire town. Finally, there are nine towns that form Vermont's four Unified School Districts. These districts are similar to Union Districts except, the previous school boards are abolished and new ones are created combining the talents of the former districts.[12]

Vermont has an extremely large number of small and rural schools within only 14 counties. Of 401 total schools, there were 74 schools (18.5%) in small towns and 278 schools (69.3%) in rural areas in the State of Vermont, according to 1995-96 data from

Table 1. Rankings of Vermont a/

VERMONT	Rank	State	U S	Table
DEMOGRAPHICS				
Resident population in 1995 (in thousands)	49	585	262,755	(A-1)
Percent age 5 to 17	27	18.8%	18.7%	(A-6)
Percent age 18 and over	15	74.9%	73.8%	(A-7)
Percent age 65 and over	35	12.1%	12.8%	(A-8)
ECONOMY				
Personal income in 1995				
Total (in millions)	49	$12,595	$6,137,879	(D-1)
Per capita	29	$ 21,538	$ 23,348	(D-3)
As % of national average	29	92.2%	100%	(D-4)
Per pupil in ADA	27	$138,437	$ 150,452	(D-12)
GOVERNMENT REVENUE				
State and local general revenue from own sources in 1993-94				
Per capita	26	$ 3,235	$ 3,399	(E-2)*
Per $1,000 of personal income	22	$ 159	$ 153	(E-3)*
State and local tax revenue in 1993-94				
Per capita	16	$ 2,478	$ 2,402	(E-4)*
Per $1,000 of personal income in 1994	7	$ 122	$ 108	(E-5)*
Tax revenue by major source in 1993-94				
Per capita				
Local property tax	7	$ 1,033	$ 725	(E-7)*
State individual income tax	31	$ 428	$ 478	(E-13)
State general sales tax	44	$ 297	$ 504	(E-14)
Per $1,000 of personal income in 1993- 94				
State and local property tax	2	$ 52	$ 34	(E-9)
State individual income tax	32	$ 20	$ 20	(E-15)
State general sales tax	41	$ 14	$ 22	(E-16)
GOVERNMENT EXPENDITURE				
State general expenditures in 1993-94				
Per capita	16	$ 4,174	$ 4,125	(G-1)
Per $1,000 of personal income in 1992	14	$ 206	$ 186	(G-4)

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VERMONT	Rank	State	U.S.	Table
State and local expenditures by major function in 1993-94 Per capita				
Local public schools	12	$ 1,057	$ 949	(H-8)
Public welfare	12	$ 764	$ 691	(G-5)
Health and hospitals	50	$ 119	$ 386	(G-6)
Police protection	45	$ 132	$ 210	(G-7)
Fire protection	48	$ 52	$ 124	(G-8)
Highways	5	$ 460	$ 277	(G-9)
SCHOOL FINANCE EFFORT				
School revenue in 1994-95 Per $1,000 of personal income in 1995	5	$ 34	$ 59	(F-5)
School expenditures in 1994-95 Per $1,000 of personal income in 1995	4	$ 34	$ 53	(H-13)
SCHOOL FINANCES (CURRENT YEAR)				
School revenue in 1996-97				
Per pupil ADA	8	$ 8,490	$ 7,141	(F-4)
Percent of total from				
Local	3	66.1%	44.5%	(F-8)
State	48	28.9%	48.7%	(F-10)
Federal	43	5.1%	6.7%	(F-11)
Current expenditures in 1995-96 Per pupil ADA	8	$ 7,474	$ 6,133	(H-14)

a/ Data Source: NEA (1998). Rankings of the States, 1997. Washington D.C.: Author.

the National Center for Education Statistics.[13] Nationally, 12.8% of schools were located in small towns and 25% located in rural communities.[14] A comparison of Vermont and national locale indicators are located in Table 2. There is an average of 44.3% more rural schools in Vermont than in the United States, and there are 5.7% more small town schools in Vermont than the national average.

Local control of school districts is a direct result of Vermonters' desire for democratic control in their communities and exemplifies the value they place on education. In most towns, Vermonters meet annually at the town and school district meeting, usually held the first Tuesday in March.[15] At these town meetings school board officers are elected, and budgets for the upcoming school year are passed. While this may seem like a typical small town activity, the allegiance to local control is evident by the number of school

Table 2: Number and Percentage of Schools by Community Type

Community Type	Number of Schools, U.S.	Percentage of Schools, U.S.	Number of Schools, VT	Percentage of Schools, VT
Large City	10,945	12.7	0	0
Midsize City	12,451	14.5	18	4.5
Urban Fringe-Large City	21,032	24.4	0	0
Urban Fringe-Midsize City	7,688	8.9	31	7.7
Large Town	1,469	1.7	0	0
Small Town	10,998	12.8	74	18.5
Rural	21,475	25.0	278	69.3
Total	86,058	100	401	100

Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data, School Universe, 1996-97. U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD) School Years 1991-92 through 1995-96, NCES 98-209

boards. Virtually every town has its own school board and most towns have their own school districts. Approximately 1,300 Vermonters serve on 254 school boards.[16] While some towns "tuition" their students to schools outside of their town, or to another state, many of these towns still have school boards. As a result of the desire of towns to have community schools, many of the schools in Vermont are very small with populations of less than 100 students. "Thus Vermont's small size has uniquely enabled its citizens to have direct access to elected officials and the arenas to make their opinions known" and as a result "Vermonters have historically resisted attempts to centralize services and refused to allow the state to assume more responsibility over local governance."[17]

HISTORICAL OVERVIEW OF SCHOOL FINANCE IN VERMONT

In providing a history of education funding in Vermont, Peter Teachout explains that one consistent theme since the Constitutional period was the principle of local control over school spending. Through the 19th century, the state's responsibility was to "ensure universal basic education for children in the state."[18] It was not until the 1820's the notion of equalization of educational opportunity came about.

In 1777 the Vermont Constitution, which was modeled after the Pennsylvania Constitution, included an education clause.

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> A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by each town, making the proper use of school lands in each town, thereby to enable them to instruct youth at low prices--One grammar school in each county, and one university in this State, ought to be established by direction of the General Assembly. [19]

This provision for public education differed from the Pennsylvania Constitution in only one way--the Pennsylvania Constitution stipulated that the salaries to the masters should be "paid by the public" rather than paid by the town as indicated in the Vermont Constitution. According to one Vermont historian, this distinction has "established the basis for two centuries of rancorous debate and disagreement between state and local school officials."[20] In 1782, the first law was established for funding local school districts using property taxes and supplemented by special taxes that were paid by parents of the students. In addition, the law provided for the authorization of local school boards and for the division of towns into districts. [21]

In 1786, following a Constitutional Convention, the education clause was amended.

> Laws for the encouragement of virtue, and prevention of vice and immorality, ought to be constantly kept in force, and duly executed: and a competent number of schools ought to be maintained in each town, for the convenient instruction of youth; and one or more grammar schools be incorporated, and properly supported, in each county in this state. And all religious societies, or bodies of men, that may be hereafter united or incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected, in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.[22].

The amendments to the Constitution included two important changes. The first provision making a town responsible for teachers' salaries was deleted. The second provision combined the education and virtue clauses, suggesting that Vermonters viewed virtue as a part of education as a whole. [23]

In 1795, the state Legislature passed a law that allowed towns to raise funds using either a poll tax or a property tax. During the 1800's the Legislature imposed several tax increases at the local level to be used for education. In 1810, a 1% tax was levied on the Grand List of each town to be distributed among the school districts.[24] The tax rate was increased in 1824 to 2% and in 1826 to 3%. In 1833 however, the Legislature exempted families without school children. This legislation remained in effect until 1864.[25] Throughout the 1800's the Legislature became more involved in education decisions relating to the funding and governance of schools.

EARLY EQUALIZATION EFFORTS

Beginning in the mid 1800's, school districts in rural areas experienced a decrease in population. Between 1890-1920, more than 39,000 people left the rural towns due to a migration to urban areas.[26] This mass exodus resulted in the first school tax levied on the Grand List to be distributed to poor, rural towns. In 1894, the school tax was increased to 8% and a road tax was added, as the only two state taxes levied for the purpose of redistributing money from wealthy to poor towns. In 1915, the statewide property tax was raised to 10%, following a Carnegie Commission Report arguing for developing a school system "equal to the needs of its people."[27] This property tax was levied to aid towns for salaries, secondary school tuition, vocational courses, transportation, and general aid on a flat per pupil basis.

From the late 19th century, the issue of equalization of funding continued. A group was commissioned in 1933 to study the Vermont educational system. The work of the commission resulted in three recommendations including greater equalization of educational opportunity, fairer apportionment of tax burdens, and encouragement of local control.[28] The Legislature enacted these recommendations and implemented a new law requiring poorer school districts to receive greater state aid and for wealthier districts to receive les. state aid. Despite the increase in dollars to poorer school districts, disparities persisted. In 1949, the state instituted incentives for school districts to spend minimal amounts for school programs, which replaced the 1933 allocation system.[29] In 1964, an aid bill was passed by the Legislature to ease the excessive burden of the property tax.

The Miller Formula. In order to ensure equity in the financing of public schools, the state of Vermont instituted a state distribution technique known as District Power Equalization (DPE) or the Miller Formula in 1969. The Miller Formula, instituted in Vermont, was a type of DPE system called a percentage equalizing grant. The focus of the percentage equalizing grant was to promote equity in school finance by equalizing the ability of school districts to finance public education.[30] The amount of aid a school district received under the formula was determined by three characteristics: the amount of current expenditures in a school year; the number of pupils and average daily membership (unweighted); and the assessed property wealth of the district as measured by the Equalized Grand List (EGL) taken from the state tax departments equalized fair market values.[31]

In addition to the Miller Formula, the state provided categorical grants for construction, vocational education, special education, and indebtedness, with the exception of vocational education, categorical aid was distributed as a flat grant. Though the Miller Formula was designed to equalize the distribution of general aid, all districts regardless of wealth received at least a minimum level of aid. From 1969 to 1982, the Miller Formula provided the only equalizing aid available to districts, which gradually declined from about 30% to 21% of state funding for K-12 current expense.[32]

In 1975, the Report of the Governor's Panel on State Aid to Education found that though the purpose of the Miller Formula was designed to equalize funding, it had not done so.

Though the state had not provided full funding through the Miller Formula, the Panel suggested that the formula itself was defective and as a result, not fully funding the system had no bearing on the inequities that were inherent in the system. The Panel made several recommendations, one of which included removal of the Equalized Grand List as a determinant of a school district's state aid percentage and replacing it with the district's income index and non-local revenue ratio. According to the Panel, a weak correlation was found between property wealth and income (r=.104), supporting the Committee's assertion that property wealth should not be used in the funding formula.[33]

The Legislature in 1983, partially implemented the Panel's recommendation by including income as a part of the formula for local wealth. While the formula was still a percentage equalizing formula without recapture, wealth was comprised of district property value per ADM and district median capped Adjusted Gross Income (AGI) per tax return.[34] During the period of time from 1983-1988, the rank in overall school revenue per pupil increased from 23rd in the country in 1983 to 11th in 1988. Ironically, the state's share of costs actually decreased during this same time period from 37.7% to 36.6% of total revenue over the period.[35] The state's share of funding under the formula also decreased during this same time period, and deteriorated until 1987 when a foundation plan was put into effect.[36] Despite the inability to institute an equitable funding system, the legislative attempts to equalize funding indicated an awareness that education was fundamentally a state, as opposed to a local, concern.[37]

THE FOUNDATION FORMULA

In 1987, Vermont instituted a foundation formula for general state aid. The foundation cost was calculated on a per pupil basis as the amount required by a typical school district to provide an education meeting state standards for, e.g., curriculum, facilities, class size. The state also provided categorical programs comprised of both state and local shares for special education, construction, bond indebtedness, transportation, and retirement.[38]

Pupil Weights. Under the formula, state aid to education was the equivalent of educational need minus local resources available. Educational need was determined by a two-year average of ADM, and adjusted by weights for secondary students, (0.25), poverty (0.25) based on persons receiving food stamps, and transportation (0.0385 to 0.0714) based on population density. The population density adjustment for transportation was the only factor in the Vermont formula which considered size or sparsity. Among the 50 states in 1980, Vermont was the least urbanized at 33.8%.[39] Although the population density and people per square mile were near the national average, the people in Vermont were spread more uniformly. While sparsity resulted in low teacher/pupil ratios, costs were also higher. However, the Commissioner of Education of Vermont only recommended to the Legislature a foundation cost level deemed sufficient to provide a minimum education. The total foundation cost was the product of the weighted ADM and the recommended state foundation cost.

State and Local Funding. The local resources available to pay for education were based on the value of the property of each town. Property value in the formula was the Equalized Grand List (EGL) representing 1% of the aggregate fair market value (AFMV) of all real property in the town as determined by actual property sales. The town's real property value was multiplied by the foundation tax figure, set annually by the Legislature, to represent total local resources available.[40]

The state provided two adjustments for special factors. The base foundation tax rate was adjusted for income, resulting in an average effect of approximately $.01 on the tax rate across all towns. A second adjustment was supplemental aid for districts who spent more than 50% above the state foundation figure. In 1993-1994, this resulted in about $384,800 out of $139,700,000 spent.[41] To ease the burden of low income households. Vermont provided homeowners and renters rebate plans, providing rebates through individual income tax returns.[42]

As a state, Vermont seemed dedicated to increasing revenue for education. Between 1983 and 1992, nominal local revenue devoted to education increased by 148%, while state revenue for education increased 102%.[43] In 1990 the Education Commission of the States reported that Vermont's total state increase of funding for education had been surpassed by only three states. And in terms of combined state and local percentage growth, Vermont ranked second only to Connecticut in overall spending for education during the same time period.

Revenue Inequities. Within the state, however, the inequities in funding in Vermont occurred in both revenue raising and distribution to the school districts despite the efforts of legislated funding formulas. In terms of revenue distribution to the school districts, the wealthy towns, due to the strong property tax base, were able to generate significant revenue for education with minimal effort. In 1995, "school districts had per-student property values ranging from $1,192 to $116,805. Such a huge variation resulted in a federal range disparity ratio of 481%."[44]

In 1985 the current expenditures for education per ADM ranged from a low of $1,865 to a high of $4,820. In 1991, however, the gap in spending increased with the lowest spending district providing $2,043 per student and the highest spending district providing $6,968. This disparity resulted in approximately $100,000 for a classroom of 20 students annually.[45] A report prepared by the Vermont Department of Education in 1992 showed that the top spending 5% of school districts spent twice as much as the bottom 5%, yet the two groups had similar effort. But in fact the state share of spending in Vermont decreased. In 1982, the total state share of spending for education was 35%, the highest percentage level in the decade for Vermont. The state share actually decreased in 1987 just more than 33%, and in 1992 was less than 28% for the funding of education.[46] The National Center for Education Statistics indicates that the state share of total education spending in FY 1992 was 31%. Nevertheless, this is low compared to the national average of state spending for education for FY 1992 at 46.4%.[47]

Taxpayer Inequities. Despite the large inequities in educational spending between towns, tax inequities were much higher. Approximately 75% of school expenditures came from local property taxes, resulting in a Federal Range Ratio of 254% in 1993-1994.[48] Because Vermont's towns are relatively small and property wealth is distributed unevenly, there were extreme variations in the local tax burdens. According to one analyst, "On average, the tax burden, defined as the percent of after tax adjusted gross income (AGI) which goes to local school taxes paid by residents, is 30%-40% higher for the lowest income towns than for the highest income towns."[49]

The resident tax burden (RTB), according to one researcher in the AERA publication *The State of School Finance Policy Issues, 1994*, indicated that although Vermont's RTB was about 3% on average it ranged from 8.39% to 0.015%.[50] This range, approximately 550 to one, resulted in some districts with RTB's below the state average receiving equalization aid while others with higher RTB's received little or no aid. In 1990-1991, the foundation tax rate was $1.09 per $100 fair market value and this rate increased consecutively through 1994-1995 to $1.27 per $100 fair market value.[51] Despite numerous proposals to resolve the disparities, including a state property tax, political differences and a strong localist tradition prevented the passage of any equalizing proposals.[52]

As the foundation tax rate increased, so also did the number of towns that "came off the formula." In 1993-1994 there were approximately 130 districts out of 251 districts that received no aid or restricted or restricted aid. "Gold towns," districts whose resources were 1.5 times greater than their formula needs, received no state aid except for bond indebtedness.[53] In 1990-1991, there were 39 "gold towns," but this number increased to 50 in 1994-1995, representing approximately 20% of all districts. Although the "gold towns" received no state aid, these towns managed to spend on average $1200 more per pupil than the rest of the state out of local resources. The Legislative representatives of these "gold towns" had little incentive to vote for increases in state aid to education because they would not receive those increases.

As a result, the poor communities whose formula needs outweighed their ability to pay were left with a smaller share of the total sum of money available for state aid.[54] Districts other than "gold towns" were eligible for minimum aid, which amounted to $150 per pupil in 1990-1991 and declined to $50 per pupil in 1993-1994. In 1993-1994 25 towns received only minimum aid from the state. Provisions were also in place if districts' position on the formula deteriorated. The maximum predicable loss provisions were set at $100 per pupil in 1990-1991 but increased to $150 per pupil in 1993-1994. In 1993-1994, 60 towns had lost state revenue to the maximum amount allowable ($150 per pupil), and with the increased foundation tax rate, these towns were forced to ask voters for significant percentage tax increases.[55]

Taxpayer inequities were especially profound in the small and rural school districts. In explaining the impact of the financial inequities in small and rural school districts, one superintendent suggested that the state economy provided the impetus for these problems:

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> The economy was shifting from predominantly rural dairy farming into a tourist economy. And what happens is that the places that had mountains and ski resorts, and you have some vacation towns such as Manchester, and what happens in these cases is that you would have tremendous wealth concentrated in a very small area. And so when you have a state financial share at 25% and you have 75% small towns, with some federal, that is coming from the local property tax, and it is a small state with 255 small, independent, autonomous towns you have a very narrow and regressive tax base. And so what happens with that is that there is just no way to recoup. And of course the people left furthest behind were the most rural towns that had no effective property wealth. [56]

One school board member provided an illustration of the poverty in his district. "We have very little property wealth--very poor. The largest single taxpayer in the town is the utility company for the telephone poles in the town. The only business is a general store. One third of the land is owned by the state." The conditions described by this school board member are typical of poor rural areas, and demonstrate the difficulty taxpayers had in raising revenue for education from local property tax.

A superintendent interviewed from a rural Supervisory Union, provided a different perspective of school districts in rural Vermont. One of the districts in this Supervisory Union is considered a "gold town." Despite this high wealth status, however, the property wealth in the town does not accurately reflect the income level of its owners nor its impression on paper.

> They have absolutely no services. And by that I mean none! No police, no fire, no water, no sewer, no anything. But because they have large areas of property and a small number of students . . . they have very few resources other than land to tax. But because there are large quantities of land and the rate that the state sets for that tax, they can in essence get at the revenue that they need to operate. It does not mean that the residents of the community have those financial resources available. [57]

One expert on rural affairs suggested that these "gold leaf towns" were burdened with high property values, but did not have the income to adequately support local schools. This sentiment was also echoed by a resident of Manchester. "The fact that we have highly assessed property does not mean that we are wealthy people."[58] Two of the superintendents and one school board member that were interviewed indicated that they were affiliated with districts that had high assessed property wealth, but the residents were not wealthy, and could not support education to the extent that seemed apparent from looking at property values on paper.

Quality of Education. The inequities in the property tax base also had a profound impact on the quality of education in Vermont. In 1990, more than half of the students enrolled in school and determined to be eligible for remedial services through ESEA and Title 1, did not receive those services. In 1990-1991, a study of 206 elementary schools revealed

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that 51% of those schools spent less than the foundation amount per child. The same study showed that 81% of the poorest 20% of school districts spent less than the foundation amount. In 1992, only 54 of Vermont's 359 public schools achieved full approval under the public school approval process.[59] The conclusion was that 305 out of 359 public schools were not providing an adequate education for their students. Furthermore, in terms of teachers' salaries, in 1993 the average teachers' salaries ranged from a high of $43,958 in South Burlington to a low of $21,515 in Norton.[60]

While these were inequities found across the state of Vermont, they were especially profound in small and rural schools. One university professor specializing in rural affairs suggested that "traditionally their budgets have been the weakest and the most often hit by state fiscal problems. They tend to have fewer teachers with higher degrees, fewer specialty courses, and definitely were behind the urban larger schools in information technology."[61]

Another superintendent suggested that the first area that was hardest hit was teacher salaries because "more affluent schools were able to pay much more and the more talented teachers would gravitate toward that. And so it was much harder to attract and attain top quality staff." Another superintendent that was interviewed echoed the same concern. "There is a wide disparity of teacher salaries across the state from town to town." According to this superintendent, individual school districts spend a great deal of time negotiating teacher salaries, time that could be spent more productively by focusing on students and instruction.[62]

The superintendents pointed out other problems as well. Though Vermont is "blessed with relatively small class sizes," due to funding inequities class sizes in the small, rural schools were generally larger. In addition, textbooks were outdated, libraries were inadequate, and facilities were "way behind." A school board member indicated that in his town, facilities were a major problem. "We didn't have a library. We had teachers and kids holding conferences in bathrooms." Although this school board member recognized the need for more space, he was told by several community members that the tax rate in the town was too high to initiate a building program. After investigating the tax rate in his town and comparing it to others in the state, he realized that the rate was proportionally very high in comparison. It was then that he realized that "A court decision [State Supreme Court] would be the only thing to enact change so that the legislature would say you have to treat kids and taxpayers fairly."

Despite the burden of the property tax, however, four of the six superintendents and one school board member indicated that residents of their towns were willing to pay the higher tax rates because they valued education in their towns. Despite the high tax rate, residents were willing to "dig deeper into their pockets" as one interviewee mentioned providing a good education for their students. This determination illustrates the fierce desire among residents to maintain local schools despite the tax burden. Researcher John Nelson wrote in 1993, "If Vermont is going to make progress toward greater equity for students, a determination as to whether there is an adequacy standard in the basic law of the state is a necessary step in the process."[63]

VERMONT LITIGATION

In response to revenue needs and the demand for property tax reform, in 1994 the State House of Representatives passed a significant property tax and educational finance reform package.[64] The Legislation in H.541 would have provided money from income and property taxes to the Legislature to allocate to the districts. The Legislature would set the property tax rate for schools and would have determined the local income tax districts could retain.[65] Though the Bill was passed by the House of Representatives, the Bill failed in the State Senate.

The failure of H.541 prompted Vermont lawyer Robert Gensburg to bring the issue to the legal panel of the American Civil Liberties Union (ACLU). The panel decided that this was a serious constitutional civil liberties issue and that a lawsuit should be brought against the state by the ACLU.[66] Gensburg indicated that this was not a novel idea since 16 other states had previously declared their funding systems unconstitutional.

THE PLAINTIFF'S CASE

In Vermont, however, there was no history of school finance litigation.[67] One analysis of the Vermont Constitution concluded that an equal protection challenge to the state's funding mechanism might succeed.[68] In making a case under the equal protection challenge, Gensburg indicated that "the plaintiff must have a right that is being deprived or substantially burdened by some kind of state action."[69] Gensburg then turned to the education clause, section 68 of chapter 2 of the Vermont Constitution of 1786.[70] According to Gensburg, the joining of these two clauses in the 1786 Constitution indicated that the framers saw a connection between education and citizenship that was crucial to the survival of the state. According to Gensburg, this made the connection between citizenship, a fundamental right, and education.

In addition, through his research of previous Vermont Supreme Court cases, Gensburg discovered an important passage in *Williams v. School District* indicating that "it has always been the duty of the legislature to see to the education of the children of the state, at the expense of the state, and the Constitution especially enjoins this duty on the legislature."[71] Gensburg indicated that with a duty there is a correlative right, and as such the plaintiff lawyers concluded that the children of Vermont had a right to education at the expense of the state.

Inequities. From an inequity standpoint on behalf of the schoolchildren, Gensburg discussed in his 1997 article in the *Vermont Law Review* the difficulties the Hardwick school district experienced. Faced with severe budget problems in a town that already had a high property tax rate, in 1994 the town of Hardwick had to eliminate a remedial teacher for the first grade, despite the fact that the program was primarily federally funded. By contrast the town of Stowe, a property rich town, was faced with the decision whether to appropriate $84,000 to repair tennis courts at Stowe High School.[72]

Taxpayer inequity was another problem according to Gensburg. In 1995 for example, the tax rate on an $85,000 home in Stratton was $17. By contrast, the tax rate on an $85,000 home in the town of Stannard was $2,640, resulting in a difference of 120:1 in the amount of taxes that property owners paid for education. Another example cited by Gensburg compared Greensboro to Stannard. The relative taxes in Stannard were 434% of what they were in Greensboro for exactly the same buildings, teachers, and books.[73]

Plaintiff Selection. In order to pursue the case, the plaintiff attorneys wanted to find students attending schools where property wealth was low and per pupil spending was low. At the same time Gensburg was preparing a case, several educators throughout the state were advocating property tax reform. According to one superintendent interviewed, Gensburg met with Bill Mathis, superintendent of the Rutland Northeast Supervisory Union.[74] Mathis traveled to Rutland northeast Supervisory Union and met with the board members of the Whiting school district.

Whiting fit the profile of a highly taxed town that was unable to meet the minimum standards set by the state. Whiting had an average school tax rate of $1.65 compared to the state average of $1.17 in 1995. The average income per person in Whiting was 83% of the state average and the Grand List of the property tax base was less than 70% of the state average in 1995.[75] As a result, Whiting was selected as a plaintiff district, and Amanda Brigham, a grade school student in Whiting, was selected as the primary plaintiff, hence the name of the case *Brigham v. state of Vermont.*

SUPERIOR COURT ACTIONS

Thus, plaintiff attorneys decided to file the lawsuit In Lamoille Superior Court in March 1995 on behalf of two students from Whiting and Hardwick school districts, several property owners from "property poor school districts," and the Worcester and Brandon school districts.[76] In July of 1996, the state filed a motion for summary judgement. In that motion the state argued that education was not a fundamental under the Vermont Constitution and that for that reason the rational basis test should apply. Under the rational basis test, which the plaintiffs bore the burden of proof, the state had to justify the inequities found in the school funding system which the state legitimately controlled. The rational basis the state used to justify the funding system was the need for local control. The Lamoille Superior Court Justice, Judge J. Meaker, ruled against the summary judgement concluding that a trial was necessary to establish whether local control was a rational basis for the education funding system. Judge Meaker also concluded that education was not a fundamental right under the Vermont Constitution. The Attorney General for Vermont, G. Yudien, and R. Gensburg, lead counsel for the plaintiffs, filed a motion of appeal with the Vermont State Supreme Court which was accepted on October 16, 1996.[77]

STATE SUPREME COURT

In December of 1996 the Vermont State Supreme Court heard the case. In its finding of facts, the Vermont State Supreme Court found that the foundation formula did not eliminate wealth disparities among school districts. In fiscal year 1995, the Town of Eden spent $2,979 per student compared with the Town of Winhall which spent $7,726, or 160% more than Eden.[78] The Court also found that in 1994 the bottom 5% of school districts spent twice as much per students as the top 5% of school districts. Citing the Vermont Department of Education's, *A Scorecard for School Finance FY 1995*,[79] the property tax base for the Town of Richford was the second lowest in the state at approximately $140,000 per student and it's average student expenditure was also low at $3,743. The town of Peru however, had a tax base of approximately $2.2 million per student with a per pupil expenditure of $6,476. In FY 1995 Stannard's property tax base was approximately $118,000 per student with a per pupil expenditure of $5,684. Yet Sherburne's property tax base was $2.5 million with a per pupil expenditure of $5,731.

This second example, used by the plaintiffs, indicated that property wealth did not necessarily correlate with student expenditures. However, the tax rates for those two towns were very different. On an $85,000 home the tax in Sherburne was $247 and in Stannard was $2,040. The Court quoted the Vermont Department of Education indicating that per pupil spending "tends to be highest in resource-rich districts who benefit further with low school tax rates."[80] The opposite of course was true that towns with little resources had lower per pupil expenditures and higher tax rates.

During the court case, one superintendent mentioned that a visual impression of small and rural school facilities was not needed but had been planned. "What we had planned to do was simply haul the judge basically out to take a tour of the buildings. Let them [the buildings] speak for themselves." However, this superintendent said that the media went to the school in Whiting and viewed the dilapidated buildings and empty bookcases. According to this superintendent, this media exposure helped add validity to the plaintiffs' case.[81]

The Court indicated that "the undisputed evidence thus amply supports plaintiffs' claim that wide disparities in student expenditures exist among Vermont school districts and that these disparities correlate generally with taxable property wealth within the districts."[82] The Court also pointed out that the state had conceded that the funding scheme "denies children residing in comparatively property poor school districts the same educational opportunities that are available to students residing in wealthier districts."[83] It was assumed by this statement that unequal educational opportunities included "unequal curricular, technological, and human resources," and that school districts with unequal funding would not have the ability to provide equivalent training in foreign language, or computer technology. In addition, unequal funding the state conceded, yielded unequal ability to hire personnel with the same degree of training and experience or to provide the same salaries and benefits of wealthier school districts.[84]

The Right to an Equal Education. In addressing the issue of the right to an education in Vermont, the Court cited the Vermont Constitution of 1786 indicating that it was remarkable that the framers of the state Constitution included public education as an important government service and that it was the only government service accorded constitutional status in Vermont. Further the Court suggested that though schools were to be maintained in each town, the means of their support was not spelled out in the Constitution.[85]

In a critique of the Court's decision in the *Vermont Law Review*, Teachout[86] suggested that the Court provided some historical inaccuracies. P. Teachout, a professor at the University of Vermont Law School, stated that the Vermont Constitution was taken almost directly from the Pennsylvania Constitution of 1776. As a result, the education clause was lifted directly from the Pennsylvania Constitution and the Vermont framers chose simply not to take out the education clause.[87] Teachout pointed out that education was not the only government service included in the Constitution, citing a criminal justice system, grants of charters, and granting licenses, just to name a few.

A more important issue that Teachout raised was the funding component of the education clause. The Pennsylvania Constitution of 1776 stated that "a school or schools shall be established in each county by the legislature, for the convenient instruction of youth, with such salaries to the masters *paid by the public* . . . "[88] The Vermont Constitution however, substituted *paid by the public* with "paid by each town." Teachout believed that the Vermont framers intended local control over school spending by making this substitution.

The defense argued two points regarding the right to education. The first, that the Education Clause in the Constitution of 1777 provided that "schools shall be maintained," yet in the revised 1786 Constitution the wording changed to its current "ought to be maintained."[89] This distinction according to the defense indicated the intent to regulate education to a discretionary ideal. This notion was rejected by the Court which cited other rights enumerated in the Constitution that used the words ought and shall interchangeably.

The second argument provided by the defendants was the inclusion of the Education Clause in Chapter II of the Constitution rather than in Chapter I which contained the Declaration of Rights. The Court indicated, however, that Chapter II provided the "frame of government" and "the essential conditions of its survival" like the right to a trial by jury and the right to hold and acquire land.[90]

The State finally concluded:

> The primary constitutional responsibility for education rests with the towns of Vermont, that its funding must be derived from whatever sources are available locally, that the only substantial tax available to towns is the property tax, and therefore funding inequities are and inevitable--but

> nevertheless constitutional--consequence of local disparities of property wealth.[91]

This argument, the Court asserted, was a confusion between constitutional ends and legislative means. The Court indicated that the state could delegate authority to the towns, but it could not "abdicate its responsibility for education by passing it on to local governments."[92]

In determining the right to Educational opportunities, the Court found the Common Benefits Clause in the Vermont Constitution was similar with the equivalent guarantee in the United States Constitution. Thus, under the Equal Protection Challenge as reviewed by the rational basis test, the defense had to prove that persons were not treated differently due to "arbitrary or capricious grounds." The defense provided four main points in their justification for funding inequities. The first of these was that in order to maintain local control, it was an inevitable consequence that funding disparities would exist. Citing Justice Marshall in dissent from Serrano v. Priest, the Court indicated that local control for poor school districts was a "cruel illusion."[93]

The defense argued that the framers did not intend the right of education to be distributed equally, even if the Constitution provided a basic right to education. The Court disagreed, indicating that, while politically equality in education has not been present, the principle for equality has always been present. The Court cited an Inaugural address of Governor Samuel L. Crafts who indicated an indispensable duty to make provisions for education.[94] In this point, Teachout criticizes the Court for being picky and choosing political sentiments that reflected its one-sided view. Teachout contends that the Court could have provided that suggested the opposing view as well, and as a result, did not sufficiently address this argument set forth by the defense.[95]

The third argument stated by the defense indicated that the Foundation Program did try to provide a way of reducing the disparities that existed among the school districts. The Court agreed that the Foundation program did attempt to remedy some of the disparities. It further suggested that an exact amount of funding for each school district was not reasonable. However, the Court explained that the current funding scheme allowed significant disparities in funding that were too extreme.

Finally, the defense argued that as long as the state provided a minimal level of educational opportunity, the Common Benefits Clause would not be offended. The Court countered by stating that the evidence demonstrates that the system fall short of achieving equality of educational opportunity. In sum the Court concluded the following:

> Whether we apply the "strict scrutiny" test urged by the plaintiffs, the "rational standard" advocated by the state, or some intermediate level of review, the conclusion remains the same; in Vermont the right to education is so integral to our constitutional form of government, and its guarantees of political and civil right, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate

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> heavy burden of justification. The state has not proved a persuasive rationale for the undisputed inequities in the current educational funding system. Accordingly, we conclude that the current system, which conceitedly denies equal educational opportunities, is constitutionally deficient.[96]

The Court found the funding scheme unconstitutional and held that education was a fundamental right but insisted that the remedy for the funding system must come from the state legislature.

In his concluding analysis of the case, Teachout found that the question in Brigham v. State was not simply about spending differentials, but instead was about the discrimination that existed in access to revenues between the wealthy and poor school districts. "The inherent unfairness of such a system is what the plaintiffs claimed violated the state constitution. That is what the court condemned."[97]

LEGISLATIVE AND STATE ACTION

The legislature was soon to respond to the Court's decision. The literature surrounding the Equal Education Opportunity Act (EEOA) and the accompanying legislation better known as Act 60 is scarce. The primary source of information concerning this legislation is the Vermont Department of Education, education organizations in Vermont, and miscellaneous news articles that have depicted the basic elements of the funding system as well as the political backlash resulting from the legislation. The initial phase of implementation occurred in FY 1998 with the major part of implementation occurring in FY 1999. The Act will not be fully implemented until FY 2001. As a result, the research literature does not provide information regarding the implementation of Act 60 or its impact on state funding.

According to the Vermont School Boards Association (VSBA), the Equal Education Opportunity Act "brought dramatic changes in the area of education finance and significant force and direction in the area of education quality."[98] The law provides that it is the "policy of the state that all Vermont children will be afforded opportunities which are substantially equal although educational programs may vary form district to district."[99]

ACT 60, THE EQUAL EDUCATION OPPORTUNITY ACT

The result was Act 60 also known as the Equal Education Opportunity Act (EEOA). Act 60 was an amendment to Title 16, Part 6, Chapter 133 of the Vermont Statutes Annotated entitled State and Local Funding of Public Education. This policy has two basic purposes: to make educational opportunity available to each pupil in each town on substantively equal terms; and to provide state block grants and educational spending so

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that each school district will have substantially equal capacity to raise relatively the same amount per pupil on the local tax base.[100]

The Vermont State Legislature worked quickly in 1997 to enact legislation to meet the requirements set forth by the State Supreme court. According to their research review, Proulx and Jimerson found that "at the time Act 60 was enacted per pupil expenditures ranged from just under $3,000 to over $8,000." In their article they suggested that at the time of Act 60 "in public opinion polls and in political campaigns property tax reform became the number one issue in Vermonters' minds."[101] The Vermont legislature took approximately four months from start to finish to enact this legislation, and according to one superintendent interviewed:

> Property tax reform was on the agenda for the last 50 years and was really given impetus in the 90's. A zillion schemes have been put up and knocked down because they couldn't muster the votes [in the legislature]. They would get the votes in the House but lose them in the Republican controlled Senate. We came out of a bad recession in the 90's and there was a great will for property tax reform. At the same time, the Court decision plopped down right in front of us and the legislature had modeled eve vthing, and all of the printouts had been modeled a thousand different ways so it was easy enough to paste it all together. So what happened was that all of the stars were aligned. The other thing is that the Senate went Democratic.[102]

As discussed, in House Bill H.541 the House of Representatives proposed a state wide property tax, among other things. But it was voted down by the Senate. As this superintendent suggested, Act 60 "moved like a shot" but the reason that it moved so quickly "was because of six or seven years of homework," prior to the adoption of Act 60.

While the quality standards associated with the EEOA are the most important piece of Act 60 according to three of the four superintendents interviewed, the element of the Act that has the most immediate effect on taxpayers, parents, and children are the provisions for raising and distributing revenue. In terms of revenue distribution to the school districts, the basic school support program is a two tiered system consisting of a basic support block grant and a guaranteed yield with recapture.

Statewide Property Tax. A major component of the new funding system is the statewide education property tax. This tax establishes one rate for both homestead and nonresidential property and it is paid directly to the state. For FY 1999, the property tax rate was $1.10 for each $100 of the equalized grand list (EGL) but the rate is adjusted for income sensitivity for individual taxpayers. Although the General Assembly establishes the tax rate each year, the increase cannot exceed $0.03 per $100 of the EGL in any five-year period.[103]

Revenue for the block grant features two "income sensitivity" provisions. The first is a "circuit breaker" that ensures that no homestead owner with a household income of less than $75,000 will pay more than 2% of that income for this tax. The second is a homestead exemption if the income sensitivity provision is not attractive to certain homeowners. Under the homestead exemption, taxpayers can choose to pay the tax the municipality would have assessed on the homestead if its equalized value had been reduced by $15,000. The income sensitivity provision also provides a "super circuit breaker" for residents with household incomes of less than $47,000. The "super circuit breaker" allows a credit against the income tax for property tax or resulting in increased rent from property tax in excess of 3.5%-5%. The incorporation of an income sensitivity provision one superintendent noted is a unique feature of Act 60. According to this superintendent, "there is not a feature anywhere in the United States like this one."[104]

Local Property Tax. An important feature of Act 60 to local tax payers is the ability to set school budgets at the local level.[105] After a local budget is set annually, the first tier of support, the "general support grant" is subtracted. School districts which decide to authorize a budget in excess of the general state support grant must levy an "equalized share property tax." The tax rate is determined as a percentage of the statewide property tax liability. The amount of spending above this block grant is then calculated on a per pupil basis. The rate of tax is equalized using an equalized yield finance system to provide additional funding to poor wealth school districts.[106]

On or about June 30, the commissioner of education determines the equalized yield amount which is used to determine the local share property tax percentage a school district must pay if the district adopts a budget in excess of the state support grant. This amount also determines how much the district will pay into or receive from the education fund.[107] Essentially, the equalized yield provides a specific dollar figure amount per pupil that each school district will receive for a percentage of tax increased beyond the state share property tax, or equal yield for equal effort. Thus, the same rate of effort yields the same dollar figure amount regardless of wealth of a particular school district.

Transition Period. Because the equalized yield system does not take full effect until fiscal year 2001, the state made provisions to gradually ease districts, particularly the property rich districts, into the new funding scheme. To aid in this transition, the towns with a property tax of $.20 or less in 1997 were required to make up one third of the difference between that figure and the $1.10 rate. Any other town below the $1.10 rate in 1997 was required to add $.30 to the 1997 rate up to $1.10. Towns that exceeded $1.15 in 1997 were only required to pay $1.15.[108] From FY 98 to FY 2000, 132 school districts out of 255 increased their state education property tax liability. In FY 98 the state education property tax liability was $502,677,725 and it increased in FY 2000 to $527,885,002 for a total increase of state property tax liability of $25,207,277.

These numbers should be approached with caution, however, since it is difficult to compare pre-Act 60 numbers with current numbers. As indicated by one researcher in the Vermont Department of Education, before Act 60 taxes were assessed on a municipal equalized grand list, which is total assessment at 100% fair market value. A different

grand list is used after Act 60 which is derived from the municipal grand list, but removes the value of machinery and equipment excluding the value of cable property. This education grand list is converted to the equalized education grand list (EEGL), which is the education grand list if it is assessed at full market value.[109]

School districts with a grand list per pupil of more than $15,000 could pay 50% of their revenues from nonresidential property taxes to the state education fund. School districts between the statewide average and $15,000 could pay 50% of the revenues from their nonresidential property taxes based on a sliding scale. Districts with a grand list per pupil lower than the statewide average received up to 75% of the revenues raised from its property tax based on a sliding scale. In the year 2000, the General Assembly set the equalized yield amount in a manner that would provide the greatest access to educational revenues for all school districts while easing the transition for districts that would incur higher tax burdens.[110]

Because the establishment of the equalized yield is predicated on school districts providing the respective budgets to the Commissioner of Education in a timely manner, the Act includes provisions that penalize districts. If school districts fail to adopt a budget prior to June 1, the Commissioner of Education will use the school district's most recently adopted budget to determine how much the district will have to pay into the education fund. If the school district subsequently adopts a school budget, then the district must succumb to the provisions set forth by the Commissioner of Education.

These provisions require the school district to receive or remit payments based on the least favorable outcomes to the district using the previous or the current budget. For example, if a district is due money from the fund, then the district will receive the lesser of the two amounts calculated from the previous and the current budgets. If the district is required to pay money into the fund, then the district will pay the greater of the two amounts using the former and current budgets. These provisions in Act 60 are necessary in order for the commissioner of education to calculate the percentage tax levy owed by each district as well as the percentage the district will receive.[111]

Education Fund. A key component of the Act 60 legislation is the establishment of an education fund. The education fund includes all revenue paid to the state from education property taxes and local share property tax revenues. Also, included in the education fund are the following: funds appropriated or transferred by the General Assembly; state lottery revenue; 20% of tax on meals, rooms, and alcoholic beverages less $1,560,000; 90% of tax on corporate income; slightly more than 58% of revenues raised by bank franchise taxes; telecommunication service revenues; brokerage fee revenues; a percentage of motor fuel tax on gasoline; and one-sixth of the revenues raised from the purchase and use tax.[112] Payments from the fund are to be used for school districts and supervisory unions for the support of education; to cover the cost of short term borrowing; and to make required payments. All balances in the fund are to remain in the fund as well as to accrue interest.

A key component of the education fund is the budget stabilization reserve, which ensures that funds for education will be maintained at an excess of up to 5% of appropriations from the previous fiscal year. Any surplus in the fund more than 5% will be appropriated by the General Assembly in its next session in support of education. If the education fund has an undesignated deficit in any fiscal year, the fund reserve will be used to offset the deficit.[113]

General State Support Grant. The primary state aid provision of Act 60 is the "general state support grant" or "block grant" to each school district. The general state support grant is the base amount provided to all school districts regardless of wealth. Initially, when Act 60 was first introduced, the general state support grant was rumored to provide $5,000 per pupil. In FY 1999, however, the total support grant was actually $5010, but this figure also included the special education mainstream block grant and funds for essential early education programs (EEE). The general support grant is the net amount per equalized student available after the special education mainstream block grant and the essential early education grants are deducted from the base grant. In FY 1999 the total general state support grant of $5,010 included the mainstream block grant, calculated at $236.15, and the EEE grant calculated at $35.50.[114] The general state support grant is slated to grow annually at the same rate as the federal index for state and local government services.[115]

The block grant is based on equalized pupils which is the long-term weighted average daily membership multiplied by the ratio of the statewide long-term average daily membership to the statewide long-term weighted average daily membership. The weighting system under Act 60 is similar to the weighting system used in the Foundation Formula except that it does not provide a weight based on transportation, but it does provide a new weight for limited English proficiency students (LEP). The weights are based on average daily membership for secondary education (.25), for poverty (.25), and for LEP students (.20).[116]

Guaranteed Yield. The guaranteed yield provides a specific dollar figure amount per pupil that each school district will receive for a percentage of a tax increase beyond the state share property tax. Thus, the same percentage of effort yields exactly the same dollar figure amount regardless of the wealth of a particular school district. For FY 99, a transition year, the above block spending was translated into a sliding scale guaranteed yield which varied as a function of town property wealth per student. The average guaranteed yield was about $42 per pupil for each percent increase in the excess of statewide property tax.[117] In FY 2000 the guaranteed yield will provide $40 for each locally voted percentage point (1.1 cents) increase in the tax rate.[118] The guaranteed yield has a recapture provision in which towns that have shortages due to lack of fiscal capacity receive additional revenue from the state. Towns that raise revenue in excess of funds will have their monies recaptured and redistributed through the education fund.

Special Education Grants. Act 60 also provides for several specific aid programs (categorical aid) to support costs associated with special education, transportation, debt service payments, school construction, and small schools. The special education

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mainstream block grant is included in the general support grant and is not recognized by the localities as a separate grant. The theory behind this portion of special education support is to "allow prevention services for needy children without the necessity of a formal bureaucratic process."[119] For FY 1999, the state reimbursed school districts for 60% of all special education expenditures, which is included in the mainstream general support grant.

The state provides an extraordinary reimbursement grant for individual students whose services require additional expense. The state pays 90% of all costs above $50,000. The state also provides a special education reimbursement grant known as an intensive grant that is disbursed from the remaining 60% total state commitment after providing mainstream and extraordinary reimbursement payments. It is calculated as a percentage of remaining allowable costs.[120]

The state provides an early education grant (EEE), also included in the mainstream general support grant, for voluntary early education programs. Schools may receive this grant of up to $30,000 for early education programs if such programs did not currently exist prior to Act 60 legislation. The funds may be used for personnel costs, training of parents and staff, materials and equipment, and other costs.[121]

Small School Support Grant. A significant grant legislated through Act 60 was earmarked for small school support. School districts eligible for this grant must operate at least one school that has a two-year average combined enrollment of fewer than 100 students. The amount of the grant is determined by multiplying the two-year average enrollment in the district by $500 and subtracting the product from $50,000, but the grants are not to exceed $2500 per enrolled student.

To provide more financial stability, a school district that has a decrease by more than 10% in one-year of the school district's two-year average enrollment will receive a small schools financial stability grant. The amount of the grant is determined by multiplying the general state support grant for the current fiscal year by the number of enrollment to the nearest .01 % in order to make the two-year average enrollment decrease only 10%.[122]

Since the passage of Act 60 the legislature has made adjustments to the small schools grant and the stabilization grant. In 1999 the legislature enacted a change to the stabilization grant by reducing the ADM loss to a 3.5% maximum rather than 10% as stipulated in the original legislation. The law states "a district's equalized pupils shall in no case be less than 96 and one half percent of the district's equalized pupils in the previous years."[123] This new provision aids schools with a small number of students by reducing the loss of revenue schools receive from the state as a result of reduction in the number of students.

In 1999 the legislature further increased support to small schools by expanding the definition of small schools. Under the new law a small school is defined as having a two-year average combined enrollment of fewer than 100 students or an average grade size of

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20 of fewer students.[124] A sliding scale multiplier is used to reduce the impact of grade size reductions on the amount of money received by the school district.

Transportation. In addition to the small schools grants, transportation aid is also provided. Each school district receives transportation reimbursements equaling 50% of transportation expenditures, with the provision of one trip per day to and from school for regular classroom activities. The total of the transportation grant was capped at $10 million in FY 1999, with an annual escalator. Districts can apply for reimbursement of extraordinary transportation expenses for reasons such as district size or population as permitted by the Commissioner of Education.[125] Funding payments to school districts are made at three different times during the school year, and funds are paid from the taxpayer directly to the state education fund.

Construction and Debt Service. Under Act 60, the state provides school construction and debt service aid as well as aid for technical education. School districts are reimbursed 30% for school construction costs, however, a moratorium of July 1, 1999 was placed on the applications. The debt service is allocated based on community's wealth. Debt costs are part of the general expense of a school and funded like any other expense. For contributing towns, towns whose tax rate will increase as a result of Act 60, a hold-harmless provision was put into place so that wealthy districts would not have to fund their debt at a higher rate than before Act 60. Under Act 60, technical education centers receive state general support grants directly. Schools receive no additional categorical aid for technical education students, and additional costs for these students are paid by the sending district.

Quality Standards. In addition to the fiscal changes, Act 60 provides a number of "quality standards" enforced statewide for the purpose of enhancing teaching and learning in Vermont's schools. The major development through Act 60 was the mandate for state wide assessments to correspond with *Vermont's Framework of Standards and Learning Opportunities* adopted in 1996. Though the framework was established previously, the Comprehensive Student Assessment System will test students on the standards in the framework, and if a school's curricula are not aligned with the framework, it is expected that their students will perform poorly on the assessments. The previous forms of assessments, portfolios, were replaced with statewide standardized tests, however, the proposed School Quality Standards require school districts to develop their own assessments.[126]

Action Plans. Locally, school districts are responsible for developing local action plans and implementing reporting and accountability procedures. They are also responsible for ensuring compliance with the new state standards relating to professional development, staff evaluation, school practices, and access to technical education. The local action plans are required to contain goals and objectives to improve student learning as well as strategies to meet those goals. The local action plans also require a process for including parents, teachers, and community members into the development process. The plan should also encourage other education groups, like local colleges, to participate in the planning and implementation process through workshops and summer institutes. Many

schools in Vermont previously had strategic plans, but for those that did not. Act 60 provided "Challenge to Excellence" grants of up to $50,000 for districts to develop or implement their action plans.[127]

In addition to the action plans, the localities are required to implement a number of other quality standards. Act 60 provided for the completion of the Public School Approval process, which all school districts have to meet. This process ensures that schools are focusing on school and student performance through enhanced professional development, and staff evaluation. Schools are required to develop "needs based professional development" programs and the State Board of Education is responsible for recommending appropriate ways to enhance educator development. Schools are required to demonstrate effective staff evaluations. According to one superintendent however, the state needs to provide more funding to enhance some of the quality components stipulated in Act 60. Specifically the superintendent stated that the state needs to provide more funding at the district level to enhance professional and staff development. This superintendent also indicated that, while she approves of the quality standards inherent in Act 60 districts must have qualified people to lead professional development. The superintendent indicated that there were no curriculum coordinators in her supervisory union, which are necessary to lead professional development activities.[128]

School boards are responsible for overseeing and ensuring compliance with the staff evaluation process. In order to ensure that schools are meeting the School Quality Standards, schools are evaluated every two years to ensure compliance. This review process ensures that schools are meeting the standards as set forth in Act 60 and ensures that deficiencies are corrected. The Equal Educational Opportunity Act provides that if schools are not meeting quality standards then they may ultimately be closed and their students will be tuitioned out to other schools.[129].

The State Board of Education was also responsible for providing a clearinghouse of successful education programs, developing guidelines for funding technology, evaluating the effects of the new finance plan, developing a strategic plan to enhance students' performance, and reporting on the condition of education annually. The State Board was also charged with the responsibility to develop a statewide system for teacher preparation and professional development as well as to recommend a plan or plans to organize public education. According to the legislative council report, this study should include consideration of reducing the number of school districts. The Act also included provisions to establish a commission to oversee the implementation of Act 60 and a second commission to study the property tax appraisal system.[130]

THE IMPACT OF ACT 60

Act 60 is, admittedly, a complex piece of legislation according to persons interviewed at the State Department of Education. The impact of Act 60 has been, and should be dramatic for taxpayers, school districts, and most importantly students across the state of Vermont. Essentially, Act 60 has provided two major developments in the education of

students in Vermont. The first and most noticeable is the financial impact on school districts, taxpayers, and most importantly students. The second major development relates to the quality standards that Act 60 mandated. Though the quality component of Act 60 may not be as well publicized, at this point some experts predict that it may have more far reaching implications for the people of Vermont and for public education.[131]

Property Taxes. Since the statewide property tax was implemented in FY 1999, it has been difficult to tell how it will impact school districts. The superintendents interviewed indicated that in some of their towns tax rates increased while in other towns the tax rates decreased, depending on the wealth of the towns and the extent to which residents decided to increase or decrease their local property taxes. As stated previously, 132 towns out of 255 will see an increase in their property tax rates from FY 1998 to FY 2000. However, some of those towns that will see a decrease in their property tax rates actually had an increase in FY 1999. In Worcester for example, the property tax rate was 1.706 for FY 1998 and it increased slightly in FY 1999 to 1.714. In FY 2000 however, the tax rate will decrease to 1.643. This difference is due primarily to the fact that tax rates are going through an adjustment phase in this interim period prior to full implementation of Act 60 in FY 2001.[132] With the recent implementation of Act 60 it is difficult to make definitive statements regarding the overall property tax rate until Act 60 is fully implemented in FY 2001.

Several superintendents and school board members however, indicated that property poor towns in their district witnessed a reduction in property tax rates in FY 1999. The opposite was true however, for wealthy towns whose property taxes increased in FY 1999. In terms of revenue, according to the Vermont School Boards Association, "an estimated 59 towns are *contributing towns* to the state education fund in FY 1999 and 179 are *receiving towns*. The remaining 14 districts have per pupil expenditures below the block grant amount."[133] A great majority of the towns received more dollars than they actually paid at the expense of a clear minority of towns, creating unrest among the residents of Vermont.

For many of the residents in Vermont tax relief and additional funding to school districts were welcomed. Following the State Supreme Court decision, the mother of Amanda Brigham anticipated the potential windfall. She indicated that "school funding in [her] poor agricultural community [Whiting] would help reinstate a part-time principal and upgrade technology at her daughter's school, which enrolls just 44 students in grades K-6."[134] Later, in December of 1998 during the second year of Act 60 implementation, the acting principal of Whiting, Amanda Brigham's school, told reporters from National Public Radio that the lawsuit had resulted in only minimal help. "Instead of pouring money into the school, the town gave its residents a large tax break."[135]

According to this report, Whiting was indicative of most poor towns because instead of providing increased education dollars, the town gave itself a large tax break. In FY 1998 Whiting residents paid $299,657, while in FY 1999 they paid $254,165. In FY 2000 they will pay $221,203, showing a total tax liability decrease from FY 1998 to FY 2000.[136]

According to one school board member that was interviewed,

> No town gets additional revenue automatically--that's a misconception a lot of people have. The only way you get additional revenue is if you say we're going to have the same tax rate that we did the year before--and even then there is no guarantee that you would get additional revenue. There is a whole host of factors such a per pupil counts, special ed requirements, transportation expenses, any of a number of things . . . people are not getting this windfall of cash because they live in a property poor town and all of sudden everybody has equal access to resources. What's happening is when tax bills are figured out everybody, all districts, have the same access to raising money. It's hard or it's easy for us to raise $100 more per kid per school than it is for a property wealthy town.[137]

One superintendent interviewed commented on Whiting's condition and indicated that in FY 1999 the town had seen approximately a 25% increase in school revenues and although the money did not seem to be directly flowing into the school, the increase in school revenues did allow for the hiring of a part-time principal, something that would not have happened without Act 60.

Increased Education Revenue. Some school districts, according to superintendents and school board members, did benefit from an increase in revenue resulting from the Act 60 legislation in some way. One superintendent mentioned that the benefits from Act 60 resulted in school districts being able to increase technology in the schools as well as hire more staff. Specifically he cited hiring the technology coordinator for the Supervisory Union, a technology assistant, and a curriculum coordinator. The additional funding also allowed them to increase nursing access, guidance, especially in grade schools, and the number of teacher aides.

One school board member stated that his school district started a foreign language program for kids in grades K-6. A Spanish teacher comes into the school one day a week and offers short foreign language courses for all kids in the school. He said that it was relatively cheap to do and that they had talked about implementing this before Act 60, but there had never been the extra money to do so. At Rutland Intermediate School according to one news article, students exchanged 1978 edition science books for brand new ones and were able to access the Internet on new computers provided through

increased revenue.[138] In addition, the town's property taxes dropped 7.5%. According to one news article, the principal of Hardwick Elementary School, Lisa Lovlett, said that her school was able to add a summer reading program and remedial services. They were also able to increase nursing services by having a full-time nurse on staff. "We have been able to think about the needs of our students without thinking about the financial barriers which have been present in the past."[139] Residents of property-poor Randolph decided to replace a decaying elementary school. In Williamstown, voters decided to

spend money to make a heating-cooling system more efficient and halted its gradual elimination of art and music programs.

Another superintendent indicated several improvements. His school districts now have money available to reduce class sizes, and make structural improvements to existing facilities. Still another superintendent indicated that her districts were near the bottom in terms of property wealth, and under Act 60 are all *receiving districts*. She stated that the quality of the education programs would have suffered without Act 60. She believes that her districts would have reduced staffing levels in two schools, which would have created larger class sizes. Additionally, art and music programs would have been eliminated in schools that currently have them.

Educational Quality. For one superintendent, Act 60 mandated quality components that he feels have been just as important if not more important than the financing aspect. He stated, "It is the equal opportunity and access that is the most important part of Act 60". For one thing, Act 60 allowed the school districts in his union to focus on the standards established in the Vermont Framework. He believes that prior to Act 60, his school districts did not have the resources to meet the educational standards. He indicated that the increased funding more than adequately helped the school districts meet the current Vermont education standards. "We have been able to enhance the staffing appropriately on a needs basis. It is all needs based not just wants, so Act 60 has helped us improve in many areas."[140]

This superintendent also acknowledged that the mandates of Act 60 provided opportunities for community involvement, particularly through developing the action plans.

> We wrote grants for about $28,000 that were associated with--these were Challenge to Excellence grants--with Act 60. We were able to support this initiative and draw on the community and increase the ownership that the community has in each of the schools [in his supervisory union]. And this is on the quality side--this is where it counts. Each of the nine school boards has been involved in developing the action plans with the community. And that is all part of Act 60, the quality side of improving education and instruction.[141]

He said that his school districts were able to hold retreats and hire consultants. When this superintendent spoke of community involvement he included all members of the community. In terms of establishing the action plans the intent was to get all community members involved in the education process. More than anything else, according to another superintendent, the focus on action planning and assessment is now a priority in her school districts. She feels that the focus on quality will become "institutionalized" in the existing programs.

Transportation. Under the old foundation formula, transportation aid was provided based on a per pupil weighted formula that involved an analysis of the population density of a

school district. With Act 60, the old weighted system is replaced with a reimbursement that pays 50% of a school's transportation expenses. The legislature budgeted for $10 million in FY 1999, but reimbursed only about 46% of transportation expenditures, which includes "the costs of transporting students to and from school for regular classroom services" but does not include expenditures for off grounds co-curricular or extracurricular activities.[142] Nevertheless, the categorical transportation aid greatly exceeded funding under the previous formula. Additionally, the state provides extraordinary transportation expenditures geared primarily for districts that have higher transportation costs as a result of population density or size. In FY 1999 the legislature appropriated $200,000 for extraordinary expenditures but only three towns received grants which were less than $25,000.[143] A superintendent from a very rural supervisory union indicated that transportation was a big problem for his school districts. In some instances, students must travel up to 30 miles in one direction to get to school. For these districts the 50% transportation reimbursements will really help.

Taxpayer Relief. A superintendent mentioned that a unique feature from a finance point of view is the property tax "prebate system", which includes the circuit breaker and homestead exemption provision. The prebate system initially under Act 60 legislation allowed voters to subtract $15,000 from the assessed value of their homesteads and pay the property tax on the difference or pay 2% of their household income if they earn less than $75,000 a year. Under that system, Tax Commissioner Sean Campbell indicated that 110,000 checks were sent out in 1998 at a grand total of $57 million. Under legislation enacted in 1999, however, the $75,000 income cap was eliminated and the income-based tax break was provided on a proportional basis, but only for homestead owners whose homes are worth less than $160,000. According to this superintendent, "the reason for this is that they [some legislators] wanted an income-based tax system and the governor would not stand for that. So they decided to make a property tax that was income based."[144]

Small Schools Report. One superintendent mentioned the increasing importance placed on small schools. Act 60 not only provided additional funds for small schools, but also required the Commissioner of Education to study schools in Vermont with enrollments of fewer than 100 students. The study began in the Fall of 1997 and concluded in the Winter of 1998 with the Report of Small Schools. This study of 50 Vermont public schools, 16% of all public schools, concluded that "small schools in Vermont cost more to operate than larger schools but they are worth the investment because of the value they add to student learning and community cohesion."[145] In terms of costs for districts, small schools are 6-12% higher than larger elementary schools, but schools of 50 or fewer students are nearly 18% higher than the state average. The extra costs can be attributed to small class sizes, with average student-teacher ratios of 12:1, and larger elementary schools have a ratio of 15:1 students to a teacher. Enrollment fluctuations are more dramatic in small schools. For example, if a family with four students moves in or out of a school with 40 students, the percentage change is much more dramatic than it would be in a school of 400 students.[146]

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Despite the additional expenditures required to operate and maintain small schools, the Report of Small Schools found the quality of small schools to exceed that of larger schools. For example, 74% of the small school principals reported their students were adequately prepared to transition to middle or high school compared with 58% of the principals from the larger schools. The small schools reported that their facilities were in better shape (94%) than the facilities of larger schools (89%). Also, students were more likely to have quality work spaces (57%) than students in larger schools (44%). Another significant feature of small schools is the degree of parent or community involvement. (Only 31% of the schools reported non-job related volunteerism in small schools, compared with 41% in larger schools.) The study also found that small schools tended to act as the foci of the community. In 25% of the communities with small schools no other services existed such as stores or restaurants. In larger school communities, at least some of these services were present.[147] As a result, community members have greater opportunities to engage in more diverse activities in larger communities, and so the focus in and around schools is not as great.

The study found that in 34% of the schools surveyed, there was pressure for the schools to consolidate. The most frequently mentioned reason for this pressure was concern regarding the tax burden.[148] The committee concluded that although small schools are somewhat more expensive than larger schools, they provide added value to their communities. The committee also recommended further study to include high schools, and also recommended that a hold-harmless mechanism to the block grant provide some safety measure for schools that have population fluctuations.[149]

School Consolidation. The study also investigated the impact of consolidation on small schools. According to one Department of Education official who was involved in the small schools study, consolidations began in Vermont the early 1960's at the national rate. During the 1980's, however, disparities in school revenue resulted in an increased number of consolidations. A survey provided to Vermont in 1998 revealed that 17 school consolidations occurred in Vermont between the years 1989-1998. One school board member interviewed stated that a recent consolidation occurred in his supervisory union, but the consolidation included populations of approximately 40 students in each school resulting in a school size of 80 students. Although this is an example of a consolidation, the new school is still less than 100 students. As a result towns that had heavy tax burdens had to consolidate. A researcher from the Vermont Department of Education made the claim that of the 55 small schools that currently exist (small schools have enrollments of less than 100 students) the study found that in general they have relatively high property values allowing them pay their tax burdens more easily than small school districts with low property wealth.

Under Act 60, because the state support grant is based on enrollment, a decrease of 10 students (assuming a general revenue grant of $5,000) means a loss of revenue of around $50,000. To prevent such dramatic fluctuations of state support the legislature enacted a "Small Schools Financial Stability" grant. This "maximum loss protection" guaranteed that no school could lose more than 10% of its previous year's state support grant funds. In FY 1999, 3 school districts received a total of $58,000 in "stability" grants.[150]

Small Schools Support. As one superintendent mentioned, many of the small schools are also in rural regions; in fact, there are still one room schoolhouses in the state. Four of the five superintendents interviewed stated that the increased emphasis on maintaining small schools is a positive goal. The superintendents, all of whom had small schools in their unions, agreed with the research findings from the Small Schools Report in terms of the importance that the schools play in the communities. The importance of local control in Vermont is illustrated by the control localities want to have over their schools. For one State Senator interviewed, "The school is the center of the community. Without it I think we would lose our soul. For the very small children, the thought of going to a larger school--I think it is better for them to be able to stay closer to home when they start out when they are little."[151] This State Senator said that some towns are angry because they lost their small schools a long time ago. That is why she felt that it was important to make small schools a priority under the new legislation.

Under Act 60 and the ensuing legislation in FY 1998 and FY 1999, there was a major emphasis on providing small school support. In FY 1999, the Act provided $921,000 in grants to 46 schools.[152] Based on FY 2000 estimates the small school grant would have provided $938,500 for schools with two year student enrollments less than 100 students. As stated previously however, legislation enacted in 1999 provides funding for schools with grade sizes of 20 students or less. Under the previous small schools grant 52 school districts would have been eligible for funding estimated at $938,500. Under the new grade size funding formula 88 school districts would be eligible for funding based on FY 2000 estimates for a total of $3,962,978.[153] Based on FY 2000 estimates, combining the small schools support grant and the school stability grant, the state will provide an estimated $4,137,960.

Many superintendents interviewed stated that the small schools grant and the ensuing legislation will contribute to the viability of maintaining these small schools. In two of the towns in one of the superintendents unions, the towns received $68,000 and $44,000 respectively in increased state aid as a result of the small schools' grant. Two of the five superintendents discussed problems small schools had under the original Act 60 legislation.

> What was killing us was that they didn't have an ADM maximum loss formula in place. So for [one town] the enrollment went from 100 to 86 kids and for every kid that we lost, we lost $5100. So if you lose 10 kids, there goes $51,000 in state aid. But in the last hours of the legislature they came up with a 3.5% maximum ADM loss. So if you lost 10%, instead of losing $51,000 you would only lose $17,000. That really helped us.[154]

Thus, the commitment to small schools is evident in Vermont. The small schools' grant provides additional revenue to schools to absorb the impact of additional costs associated with smaller schools. Additionally, the 1999 legislation provides that a district's equalized pupils will not exceed 96.5% of the district's equalized pupils from the previous year, which reduces the loss of revenue to schools that suffer reductions in

students. And finally, the 1999 legislation broadens the definition of small schools to schools with an average grade size of 20 or fewer, which will ultimately provide greater access to schools in obtaining the small schools support grant.

On the surface, this appears to be a move in support of small schools. In reality, however, as one superintendent suggested the strong support for small schools may also be an attempt by legislators to appease towns with great property wealth that also operate small schools. In Vermont, small and rural schools are both wealthy and poor. In fact many wealthy districts operate very small schools. For example, in FY 1996 Plymouth had less than 50 students per ADM but had a property value per pupil greater than $34,000 and had a per pupil expenditure of more than $5700. By contrast, Roxbury had slightly more than 50 pupils per ADM and a per pupil property value of more than $2,700, yet their per pupil expenditure was more than $7,400.[155] These statistical comparisons demonstrate the impossibility of making stereotypical comparisons about small and rural schools in Vermont, related to wealth.

What is evident, however, is that local control is a primary concern for property rich and property poor districts alike. But some districts that appear wealthy on paper, in fact, are not wealthy. A report by National Public Radio uses the town of Brighton as an example of one of the poorest and most rural areas in the state, which ironically is considered a gold town because it has tax rates that traditionally have been low. One of the superintendents discussed a town in his district that, like Brighton, is a small, rural town with high property values but relatively low adjusted gross income levels.

> In a rural setting you have people who have to fend for themselves without services so you know you have the land in large quantities. You may have someone on a fixed income that owns 100 acres. They may have a small retirement, plus social security, and whatever, but that means that even with the cap on the $75,000 income you still have a substantial portion of their income--maybe a substantial increase on their undeveloped land. But they wouldn't put it into current use because they have no intention of doing that. Or they have no idea what that means.[156]

He mentioned that property owners in this situation may have inherited land or may have used the land for a cabin. While this may have been an incidental cost previously, under Act 60 it is a substantial cost. While these residents may receive a homestead exemption on their home in town, they get fully taxed for their second use home. This is not an uncommon occurrence, he indicated.

"Gold Leaf Towns." Nevertheless, there are towns in Vermont that have small schools with high tax bases and high resident income. Those towns have adamantly opposed Act 60. Some towns have rebelled against increased taxes which have resulted in reducing school budgets. Three towns in particular refused to pay their new statewide property taxes under Act 60. The towns of Whittingham, Dover, and Searsburg failed to pay property tax installments and as a result, the state filed claims in court against the three towns. In mid-July, 1999 Washington Superior Court Judge David Jenkins issued a

decision granting the state's motion for summary judgement against the three towns. Essentially the judge stated that the three towns had to pay their property taxes. The attorney for the three towns Gwen Harris indicated that they probably would not appeal the case.[157]

Other towns have fought the statewide property tax in a different way. In Manchester for example, residents have been raising private funds to keep from sharing local revenues with property tax poor communities. These towns have taken advantage of a loophole in Act 60 that primarily provided for school fund-raising efforts, like bake sales, in support of school activities that legislators felt should not be considered school revenue. However, a number of other communities have also raised money privately through matching grants provided by the Stowe- based Freeman Foundation. In Manchester, residents expect to raise $2 million privately for the 1999-2000 school year with $1 million provided by Freeman Foundation matching grants.[158]

In Dorset, Manchester, residents took matters into their own hands and formed their own private school. Novelist John Irving, author of *The World According to Garp* and also an outspoken critic of Act 60, founded his own private school with private contributions. Both a school board member and a State Senator that were interviewed indicated that he may have formed a private school even without Act 60. Though the 1998-1999 school year was the first year that the school was open, all of those persons interviewed remained skeptical about the survival of the school. Irving was denounced by certain media critics for his outspoken comments concerning Act 60.

But the political fallout from this very controversial issue has not had the drastic political implications that certain opponents of Act 60 felt it might have. Though some legislators were voted out of office following their support of Act 60, all of those persons interviewed believe that the political antagonism is subsiding to some extent. One State Senator indicated that residents of towns where tax rates went up were very angry and campaigns were heated in those areas. But she did not think these losses were entirely due to Act 60.

> A lot of the non-resident property owners in the ski areas put a lot of money into trying during the last campaign to get rid of some of us. In my case it didn't work. In most cases it didn't work. The unfortunate thing is that a couple of people lost, two or three people lost seats in the House. I would argue that it was not attributable mostly to Act 60--attributable to complacency and the fact that a lot of money was put in on the other side.[159]

As this State Senator suggested, the opponents of Act 60 are very outspoken but the majority of the population appears to be turning in favor of Act 60. Citing a recent opinion poll, she indicated that 53% of the public is in favor of Act 60 with 42% against, and the rest undecided. She also indicated that the percentage of those people who are undecided is decreasing, which suggests that the lines between those in favor and those opposed to the Act are becoming more galvanized.[160]

DISCUSSION

The disparities in property wealth that existed prior to *Brigham v. State of Vermont* had a pronounced effect on property poor towns. The impact of these disparities resulted in two potential resolutions. Many poor school districts were forced to raise property taxes well beyond that of the more wealthy neighbors If the local property taxes became too burdensome, poor school districts were forced to consolidate. The threat of consolidation had severe consequences for property poor school districts because of the value Vermont towns place on local control of their schools. Though the legislature attempted to rectify the disparities prior to the Brigham Case, political opposition, primarily from the wealthy, "gold towns" forestalled attempts to equalize educational funding.

The support and willingness of the ACLU to take action, bolstered by a number of reform activists, resulted in the Vermont State Supreme Court decision in Brigham v. State of Vermont. The Court determined that under the Constitution education is a fundamental right, and that the finance system in Vermont violated the rights of school children to equal access to educational opportunities.

The swift legislative response to the Court's decision in the form of Act 60 resulted in sweeping changes to the funding of schools in Vermont. The legislature enacted a two tiered system of funding schools. The first tier provides a block grant to all school districts regardless of wealth funded by a statewide property tax. The second tier of support, a guaranteed yield, is funded through a local option property tax, an added percentage of the statewide property tax voted by the local communities. The guaranteed yield recaptures revenue from property rich districts allowing school districts to receive the same dollar amounts for the same amount of local effort.

The sweeping changes in the Vermont finance system, enacted in FY 98, have impacted wealthy and poor districts alike. While property poor districts have benefited with reduced property taxes and increased school revenue, wealthy districts have faced increased property taxes. In addition school districts in wealthy towns are now faced with the reality that cutbacks in school spending may be necessary to offset the burden of increased property taxes.

As the controversy between the property poor school districts and the property rich "gold towns" continue in Vermont over Act 60, several issues emerge that legislators, policymakers, and educators must deal with that effect the survival of small and rural schools. The first of these relates to the compliance of wealthy school districts in following the provisions of Act 60. In order to avoid paying additional local property tax, wealthy towns have attempted to avoid paying their contribution to the state-wide education fund. This could have implications for all of the towns on the receiving end of the education fund. Five persons interviewed indicated that they believed that the practice of avoiding payment of local property taxes to the state was not sustainable. The

state Senator interviewed suggested that controversies among the residents of the towns are developing because some residents are paying their share while other residents are not. Nevertheless, property poor districts could suffer if this practice continues.

A second problem facing small and rural schools is the wide disparity in property wealth among the small and rural schools themselves. Though some of the towns legitimately are wealthy, others have perceived wealth as a result of the tax on property and not income. While towns with perceived high wealth are sustainable to date, their existence may depend on the small schools' grant and the property tax breaks for individuals below the $75,000 income. The additional considerations ameliorate the economic problems in most cases, however, as two persons interviewed suggested, the National and state economies are booming. If an economic downturn occurs, it is unclear what effect will it have on property owners and school districts that benefit from these legislative considerations.

This same problem exists for towns that do not actually have schools, but instead "tuition" their students to schools in other districts, states, or even countries (some students in Northern Vermont attend schools in Canada due to proximity). As one superintendent suggested, as long as student enrollment is low, then these schools will not suffer. However, as students are added, the towns will be responsible for the additional tuition, which could be much higher than the block grant, depending on the location of the school to which the students are tuitioned. Though not mentioned by persons interviewed, an economic downturn would certainly impact these students as well.

Only one of the five superintendents interviewed discussed the possibility of consolidating small or rural schools for economic reasons. This superintendent felt that schools in neighboring towns with low student enrollments could easily consolidate at great savings. He presented two arguments against the idea of consolidations. First, Vermonters are heavily vested in local schools. The ownership and loyalty and possessiveness of local residents to maintain their own schools outweighs the benefits of cost savings due that might arise through consolidation. As one superintendent mentioned, under the foundation formula, small schools that were property poor were never antagonistic toward raising taxes for education. In fact, this superintendent stated that in some of his school districts, residents took more time in selecting a moderator at the annual town meetings than they did in passing a school budget.

A second factor that weighs heavily against potential consolidations is the awareness of community members of small school advantages. The Small Schools Report conducted by the State of Vermont regarding small school advantages further solidifies the need to have small, community-based school districts.

A third consideration, according to a rural schools expert, is that the standards and assessment provisions that accompanied Act 60 have not received much attention. Although residents of Vermont have been more concerned with the finance structure of the Act, this finance expert foresees that more attention will be given to the statewide

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assessments as the furor over property taxes wains. He suggests that as residents become more aware of the implications of statewide assessments, they may feel that they have lost a great deal of local control over curriculum and instruction issues as a result of statewide assessments because they feel that they have to teach to the tests. He suspects that as the state has more control over standards, curriculum, and assessment, that controversies may evolve. This is a potential problem for all schools, but it especially would affect small, rural schools that relish having local control.

Finally, although only two of those persons interviewed indicated it was a problem, the issue of inequity in teachers' salaries also arose. One superintendent suggested that even with Act 60, salaries for teachers in his supervisory union are relatively low. Because salaries are determined at the school district level, it is not clear what impact Act 60 will have on teachers' salaries, since school districts are required to fulfill their multi-year agreements with the teachers' unions. One school board member suggested that teachers' salaries in the "gold towns" may decrease as a result of Act 60 so that those salaries are more in line with what teachers are making statewide. At this point the effect of Act 60 on teachers' salaries is mere speculation.

Another superintendent suggested that as the state has adopted a statewide property tax, it may as well adopt a statewide teacher's salary and the ensuing responsibility for payment. The idea of statewide control over salaries flies in the face of local control, as one rural expert mentioned. Though it may seem an obvious step in the current direction, this expert believes that school districts will see view a state schedule as an infringement of local control. Although a statewide teacher's salary was proposed in previous legislative sessions, according to one school board member, the Vermont Education Association actively campaigned against the proposal. The reason according to this school board member, was that the teachers' unions felt that they had a better chance of obtaining higher salaries if salary negotiations occurred at the school district level.

In determining the impact of Act 60 on small and rural schools in the state of Vermont, the issue of local control stands out. As one school board member mentioned local control of the schools

> . . . is the only thing that people do together anymore. I mean people used to shop together in the same place, the same old supermarket somewhere, they all used to go to the same church, the all used to have the same entertainment together in the days before television. The grange movement was very, very strong in Vermont so most of the towns around here still actually have granges.[161]

For this school board member and for most of those interviewed the school is the center of the community. For these towns education is not only important, but provides a critical link among members of the community. As a result it seems logical that public opposition against Act 60 is diminishing because, based on information gathered from interviews, people from Vermont realize that the provisions contained in Act 60 give all students equal access to educational opportunities.

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It is evident that Vermont will continue to have a number of issues with which to grapple relating to Act 60. The legislature has met twice since its passage and has only made minor modifications to the original legislation. This fact illustrates a determination on the part of the legislature and tacit support for Act 60. For a state that takes education very seriously, and a population that projects this ideal through local ownership in education, it is easily understood why so many Vermonters were reluctant at first about Act 60.

The decrease in individual and town property taxes, as well as the increased revenue to small and property poor districts have demonstrated to Vermonters that Act 60 works. The legislative support in the form of revenue to small schools has benefited property poor and property rich towns alike, suggesting to Vermonters that the legislature will actively support the survival of small schools. While one news article suggested that Act 60 has been a bitter pill for property rich towns to swallow, the ultimate benefit of providing the best education possible to all Vermont school children appears to be swaying the hearts and the minds of Vermonters. As a result, it seems likely that Act 60 and the sweeping reforms it brought will continue to benefit most of the tax payers, school districts, and most importantly, the school children in the small and rural school districts in Vermont.

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APPENDICES

Appendix A. Interview Participants

Appendix B. Interview Guide Questions

Appendix A. Interview Participants

Six supervisory union superintendents

Two academics with expertise in education finance and rural education

Two officials from the Vermont Department of Education

Two District School board members

One Vermont State Senator

Appendix B. Interview Guide Questions

What effect has the State Supreme Court litigation had on the funding of small and rural school districts?

In what specific ways have small and rural school districts benefitted from the State Supreme Court litigation?

What were the concerns of small and rural schools prior to and during the litigation?

What are the primary issues that remain problematic under the current funding system?

What are the political and economic forces that contributed to the litigation and the concerns of small and rural school districts?

What remedies might address these concerns?